U.S. SMALL BUSINESS ADMINISTRATION'S CERTIFICATE OF COMPETENCY PROGRAM

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST, IMPACT OF DEREGULATION, AND PRIVATIZATION

AND THE

SUBCOMMITTEE ON PROCUREMENT, TOURISM, AND RURAL DEVELOPMENT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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U.S. SMALL BUSINESS ADMINISTRATION'S CERTIFICATE OF COMPETENCY PROGRAM

WEDNESDAY, JUNE 7, 1989

House of Representatives,
Subcommittee on Antitrust, Impact of Deregulation, and Privatization, and Subcommittee on Procurement, Tourism, and Rural Development,
Committee on Small Business,
Washington, DC.

The subcommittees met, pursuant to call, at 9:05 a.m., in room 2359-A, Rayburn House Office Building, Hon. Ike Skelton (chairman of the Subcommittee on Procurement, Tourism, and Rural Development) presiding.

Chairman **Skelton**. The Small Business Subcommittee on Procurement, Tourism, and Rural Development will come to order, and this morning we will have a joint hearing with our colleagues on the Subcommittee on Antitrust, Impact of Deregulation, and Privatization. The subject of the hearing will be the Certificate of Competency Program operated by the Small Business Administration.

At this time, I wish to recognize my distinguished colleague from Ohio, my cochairman for this hearing, Dennis Eckart, who actually requested this joint hearing and who has taken an active interest in reviewing these Certificate of Competency Programs known as the COC Programs in the Small Business Administration.

Mr. Chairman.

Chairman **Eckart**. Thank you very much.

Mr. Skelton has been a very active subcommittee chair, and we relish his agreement and assistance in examining the Certificate of Competency Program, and we are grateful to him and to his staff for their assistance.

The Certificate of Competency Program allows small businesses a second chance to compete for Government procurement awards. This program came to my attention last year with the attendant publicity surrounding a small business in northern Ohio that was discovered to be delinquent on several Government contracts granted to them through the COC Program and was forced to terminate through defaults on other COC contracts. The question simply was asked, how could a business that had a history of bad financial standing still continue to receive a wide variety of Government contracts?

It was at this time that I started working with Chairman Skelton to examine the entire COC Program, to determine whether small businesses that received COC awards were adequately inspected by the SBA, and whether these businesses were prepared to compete and deliver a quality product in a timely manner to the taxpayers. It is clear to me that appropriate safeguards are necessary to ensure that these small businesses can perform up to the standards that the Federal agencies demand.

As with the case of my constituents, there have been problems with the COC Program in the past. From 1983 through 1985, the number of referrals through SBA increased nearly 50 percent with no corresponding increase in funding or personnel. This is one of the points of examination for our hearing today.

Federal procurement agencies have raised a number of complaints with the COC Program and with small businesses that have either defaulted or have been delinquent on procurement projects. Today, we will hear from two Federal procurement agencies about their views and experiences.

This program, for the problems that have received publicity, has, in fact, done some good for thousands of small businesses that have participated in it. One who could not be here to testify wrote very simply:

> My firm has benefited from the COC Program. I feel strongly that our Government's purchasing arm has also benefited. Above all, the future of the competitiveness of the market has been guaranteed.

I hope that by shedding more light on the COC Program today we can make sure that it is appropriately targeted, properly managed, and an efficient form of Government assistance to the Nation's small businesses.

I thank our witnesses, and I especially thank Chairman Skelton and his staff for their assistance in presenting today's hearing.

Chairman SKELTON. I thank the chairman, the gentleman from Ohio. I think people should know of the great interest you have in this and the great work you have done for now into your second year working with me and also with our staff. We are most appreciative.

The Certificate of Competency Program is one of the small, unheralded, often overlooked programs that Congress has established which has provided a substantial benefit to small businesses. Quite simply, it ensures that those small businesses who are capable of performing a Government contract receive full and fair consideration. That is really the purpose of it. They do not have to be wealthy, or well connected, or even be procurement experts. If they are a low-bidding small business, the Certificate of Competency Program will make sure that they have their chance.

There is a cost to the COC Program which I am sure we also will hear about today. For one thing, it adds to the time that is required to purchase goods and services for the Federal Government. There is also the cost in man hours that are needed to run the program and conduct reviews which, according to some, simply second-guesses the professional contracting officers and preawards survey analysts who already review bidding companies for the agencies.

There is, however, a substantial body of evidence that the program really pays for itself, and I think the price, such as it is, is surely worth it.

When the COC Program is operated correctly, there are no losers. The small businesses which submit the lowest bid and which is judged by the contracting agencies of being capable of fulfilling the contract gets a second chance to show what it can do, and the business that can do the job most efficiently is rewarded with a contract. The process runs itself with very little assistance.

The contracting agency benefits in three ways. First, it is able to stretch its budget and get the desired product at the most favorable price; second, the agency's pool of experienced contractors is increased; and, finally, businesses receiving a certificate of competency from the SBA have a much lower delinquency rate—and this is not generally known or understood—than other Federal contractors. The agency gets better performance on its contracts than it does with just a regular preaward survey.

In the final analysis, the taxpayer is the real winner. This program has helped to grow solid tax-paying, job-producing businesses.

So before we proceed with panel 1—we have two panels today—there is a statement for the record by Mr. Conte, the ranking Republican who is not able to be with us today because there is a conference. We will ask that it be submitted for the record in full, without objection.

[Mr. Conte's statement may be found in the appendix.]

Chairman **Skelton**. Panel 1: Mr. Robert Moffitt, Acting Associate Administrator for Procurement Assistance of the SBA; Ms. Eleanor Spector—welcome back—the Deputy Assistant Secretary of Defense for Procurement in the Department of Defense; and Ms. Ida Ustad, Director of Acquisition Policy and Regulations of the General Services Administration, the GSA. Welcome.

Ms. Spector, today will be a lot more fun than your last visit with us.

Mr. Moffitt, we will hear from you first, please.

TESTIMONY OF ROBERT J. MOFFITT, ACTING ASSOCIATE ADMINISTRATOR FOR PROCUREMENT ASSISTANCE, U.S. SMALL BUSINESS ADMINISTRATION

Mr. **Moffitt**. Mr. Chairman and members of the subcommittee, it is my pleasure to appear here today before you to discuss SBA's Certificate of Competency Program.

One of the most frustrating things to a small business is when they are notified that they are about to be denied a contract award even though they submitted the low responsive offer. Since 1942, the COC Program has been successful in carrying out its legislative mandate. Thousands of small business firms have received contracts. The Government has saved millions of dollars.

Specifically, in the past 10 years SBA has received some 38,000 referrals and, as a result, received 15,000 applications and issued 7,200 COC's. Those COC's represent a contract value of $3.4 billion. In addition, through our dialogue with the contracting agencies, we were enabled to have another 11,086 direct awards. This is where we were able to supply information to the contracting officer to allow them to change their nonresponsibility determination and award the contract without a COC. All told, over the 10 years, the program has saved the Government some $304 million. By anybody's standard, that is a significant amount of money.

In 1986, the General Accounting Office conducted a comprehensive study of the COC Program. The result of that report destroyed a number of misconceptions concerning the program, and I would like to point out a few highlights from that report.

First of all, the report found that SBA COC's procedures are consistent with the Federal acquisition regulations and provide a basis for a sound decision. Of the 287 cases sampled, 87 percent of the time SBA completed the COC review within the 15-day time limit or reached an agreement with the contracting agency for an extension.

Also, the study found that SBA does not rubber stamp COC applications. In fact, 52 percent of the time SBA issues a COC on an application.

Finally, the study found that the COC contractors performed no worse than non-COC contractors.

A more recent study done by SBA using fiscal year 1988 COC data found that the average number of days in the procurement cycle was 158. This is from the time of bid opening through contract award. It also found that the average number of days to process a COC was 14, and, as you can see, this is less than 10 percent of the procurement cycle.

There have been some problems with the COC process. In fiscal year 1985 alone, the case load of referrals grew some 57 percent and the workload reached a high in fiscal year 1986 with 5,497 referrals.

COC specialists have increased from 29 in fiscal year 1985 to a total of 49 today. Today, because of the increase in personnel and the improvements in the operation, COC reviews are done in greater depth, and, in addition, we are able to conduct more follow-ups.

Let me summarize to say that the purpose of the COC Program is to ensure that specific small business firms receive the contracts they deserve—no more and no less. The program saves the Government millions of dollars and the performance of COC contracts has improved.

Our delinquency rate is one-half of what we believe non-COC contractors' delinquency rate is, and 94 percent of all COC contracts are completed.

In fiscal year 1988, SBA issued approximately 400 COC's on DOD referrals. This is less than one-tenth of 1 percent of all DOD contract awards. From anyone's viewpoint, one-tenth of 1 percent must be considered insignificant. On the other hand, to the small businesses that receive those COC's, the program must be considered a life safer.

SBA at this time recommends no changes to the COC Program. The period of rapid growth appears to be over, and we have sufficient resources to conduct the program in the way we feel benefits small businesses and the Government contracting officers.

This concludes my statement. I would be happy to answer any questions.

[Mr. Moffitt's statement may be found in the appendix.]

Chairman SKELTON. Thank you. We will have questions for all the panel members.

You know, Ms. Spector, I repeated 500 times that the committee will be nice to Eleanor Spector this morning, and with that pledge we will call on you to testify.

TESTIMONY OF ELEANOR R. SPECTOR, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR PROCUREMENT, U.S. DEPARTMENT OF DEFENSE

Ms. SPECTOR. Maybe I shouldn't read my statement at all. That seems like a good commitment.

Chairman SKELTON. Quit while you are ahead.

Ms. SPECTOR. Thank you very much, and I am certainly happy to be back here to talk about the COC process from the point of view of a buying agency, DOD.

We are aware, of course, that the resources that are available to the Department are diminishing, and that it is therefore essential that we streamline our buying practices to be sure that we buy in the most economic fashion, and there is a lot of attention, of course, focused on that.

The procurement system in the Federal Government and in DOD has evolved into probably the most cumbersome one in the world. At the last count of laws, the Commission on Government Procurement said there were 4,000 applicable to Federal acquisition. In trying to become the fairest system in the world, which I think we are, we have paid a price. The procurement system has become cumbersome, constraining, slow, and we have not always obtained the best bargains available. We are actively seeking ways to streamline the process.

In 1988 we forwarded a legislative proposal consisting of five initiatives to Congress for the purpose of streamlining the process. One of those was a modification to the COC Program. Any changes to the program that we propose would balance the dual issues of assuring that a fair proportion of contracts are awarded to small business firms and that the buyer who is responsible be the determiner of who is responsible.

One idea under consideration is that the COC process be applied only to contracts above $25,000 since those below are already reserved for small business. When the COC procedure was enacted as part of the Small Business Act of 1953, it took away from contracting officers the final determination of the small business concern's capability to perform on a specific contract. At that time, however, small purchases were not included in the COC process.

Now each procurement of property or services with a value of $25,000 or less is reserved for the exclusive participation of small business concerns, and I might mention that 98 percent of the 15 million actions that we do are small purchases, so it is a huge, huge number. That accounts for only about 9 percent of the dollars; 2 percent of our actions use 91 percent of the dollars.

A negative determination with respect to the capability of a particular small business firm to fulfill the requirements of a small purchase generally will not have a negative impact on the objective of procuring products and services from small firms.

Another possible modification of the COC Program is that procuring agencies not be required to refer to the SBA procurements for COC action where the next low offeror is also a small business. Again, we support the overall objective of assuring that a fair proportion of total purchases of property and services are placed with small business firms; 70 percent of DOD actions are with small business firms. The exclusion from the COC Program would be expressly limited to those situations where the award would otherwise go to a small firm.

As a basic concept, we believe that the contracting officer, not the SBA, should be responsible to determine if a particular contractor is capable of performing a contract. This is a fundamental sound business practice. It is what the commercial world does. It is fundamental to getting good contractors into the DOD system.

Aside from the negative impact of the COC Program on the decision-making authority of the contracting officer, the process can be quite time consuming for the companies concerned as well as for us.

Presently, procuring agencies have no choice but to refer all negative determinations of the capability of a small business concern to the SBA for COC processing. While the normal SBA processing time is set at 15 days, it has in many cases added 90 days to the process. The SBA frequently will ask us for time extensions, and if we have to refer a COC to the SBA for a second contractor after the first contractor is denied a COC it will add additional time to that. Fewer than half of the referrals result in a request by a contractor to the SBA to continue the process.

In your letter inviting me here today, you requested information on the support required for a nonresponsibility determination by a contracting officer. The FAR requires contracting officers to obtain sufficient information to support a determination that a prospective contractor is responsible before making an award.

Documents and reports supporting a nonresponsibility determination must be included in the contract file. The referral to the SBA must include the elements of responsibility that were found to be lacking and supporting documentation, including preaward surveys, solicitation, and technical information.

Recognizing that people may differ in their opinions, as a general rule the information forwarded to the SBA by the contracting officer, we believe, support determinations of nonresponsibility. We have no indications that there is a lack of communication between the SBA and the contracting officer. The COC process can be time consuming and frequently costly. I do have examples with me of times where we have been overruled and we have had contractors on fairly large contracts default 3 years in a row in one case.

During the time involved, offers received from other small business concerns may expire if these companies are unwilling to extend their period offers. As I mentioned before, the periods for COC processing generally runs 30 to 90 days, and the ability of a small business to extend its offer depends on the commitments that they can get from materials and parts suppliers as well as the commitments they can obtain from subcontractors. It is not unusual for contracting officers to be required to seek extensions of bid period times.

Clearly, we would prefer that final authority with respect to the capability of any contractor to perform a DOD contract remains with the contracting officer. This is consistent with our thrust to return all contractual decision-making authority to contracting officers and to rely on individual authority and accountability. We believe this restoration of authority would be carried out without detriment to the small business program and could benefit individual contract actions that would otherwise be affected by the delays inherent in the COC process.

We recognize there may be differing opinions, and I am certainly open to any questions. Thank you.

[Ms. Spector's statement may be found in the appendix.]

Chairman SKELTON. Thank you.

Ms. Ustad.

TESTIMONY OF IDA USTAD, DIRECTOR OF ACQUISITION POLICY AND REGULATIONS, GENERAL SERVICES ADMINISTRATION

Ms. USTAD. Thank you. I am happy to appear before you today to respond to your questions regarding the efficiency of the Small Business Administration's Certificate of Competency Program.

As you mentioned, under the applicable procurement laws, Government contracting officers are required prior to the award of a contract to determine whether the proposed awardee is responsible to perform the contract. Responsibility involves a number of elements pertaining to the offeror's abilities and trustworthiness. Specifically, these elements include questions of capability, competency, capacity, credit, integrity, perseverance, and tenacity.

The concept of a responsibility determination gives recognition to the fact that it does not serve the Government's interest to award a contract even to a low bidder where the circumstances indicate that the offeror may not be able to perform the contract in accordance with its terms in an ethical manner.

Historically, contracting officers have been given great latitude in making such determinations in recognition of the fact that the agency contracting officials should be in the best position to assess responsibility, they will bear the brunt of any difficulties experienced in obtaining the required performance and will maintain the day-to-day relationships with the contractor on the Government's behalf.

The Certificate of Competency Program, however, affords a small business concern the opportunity to apply to the SBA for a certificate of competency when a Government contracting officer makes a determination that the small business is lacking with respect to one or more of the elements of responsibility as it relates to receiving a specific Government contract. If a small business concern applies for a certificate of competency, the SBA reviews the contracting officer's determination and independently determines whether the small business is responsible to perform the contract in question.

In the committee's May 23 invitation letter, they raised a series of questions regarding the Certificate of Competency Program. First, the committee inquired whether the Certificate of Competency Program provided an essential purpose for small business. It is my understanding that the fundamental purpose of the program was to provide a forum for the independent review of a contracting officer's determination that a small business is not responsible to perform a particular contract. The intent is to assure that the small business concern, especially new entrants into the Federal procurement marketplace, are afforded a fair opportunity to receive Government contracts. In our view, the program adequately serves this purpose and has been effectively implemented by the SBA.

Second, the committee asked how well contracting officers relate their determinations regarding the capability of a small business to perform a particular contract that is the subject of a certificate of competency. The contracting officer's responsibility determination is usually a reflection of his or her evaluation of the results of various preaward surveys conducted by technical, production, quality assurance, and financial personnel as they relate to the capabilities of the prospective contractor. These survey reports, together with the contracting officer's assessment of the survey findings, generally provide sufficient information and analysis to support the contracting officer's determination. Copies of the survey reports and the contracting officer's determination are provided to the SBA when the request for a certificate of competency is made.

The committee also questioned whether the communications between our contracting officers and SBA officials before the issuance of the certificate of competency were adequate. GSA contracting officers generally report that they have good working relationships with SBA officials and that information is freely exchanged prior to the COC issuance.

Finally, the committee asked whether the delay caused by the referral to the SBA unreasonably delayed the award of GSA contracts. The preaward referral does delay contract awards on average from 15 to 20 days. However, in GSA's view, the number of contracts affected is relatively few, and generally the delay does not unduly interfere with the agency's ability to satisfy the Government's requirements.

I would be happy to answer any other questions you may have.

[Ms. Ustad's statement may be found in the appendix.]

Chairman SKELTON. Thank you very much, Ms. Ustad.

Chairman Eckart.

Chairman ECKART. Mr. Moffitt, from 1985 through 1986, the number of contracts referred to the SBA for your consideration increased dramatically. What caused this?

Mr. MOFFITT. The major cause for the increase was the addition of referrals on small purchase procedures. These are the contracts under $25,000.

Chairman ECKART. Is it a result of the stricter standards? Is it a result of the change in enforcement?

Mr. MOFFITT. Prior to 1985, we also experienced a significant increase. At that time, there were a number of reasons. One would be stricter enforcement of nonresponsibility determinations by the contracting officers, by closer scrutiny of past performance records and quality control requirements on potential contractors, and, also, a greater awareness of the Certificate of Competency Program. All these things added to an increase in the number of referrals.

Chairman ECKART. Ms. Spector, were these standards applied fairly uniformly across the board?

Ms. SPECTOR. I presume so. We strive for fairness at DOD, and I would have to assume that they are.

Chairman ECKART. Ms. Spector, do you believe that the industrial specialists over at SBA have the expertise and the experience to correctly and adequately make the final decision on awarding a Government procurement award?

Ms. SPECTOR. They may well have the expertise. What they don't have is the investment in the outcome that we do. At DOD, if a part is not delivered, it can hold up a whole weapon system.

Chairman ECKART. Right; something doesn't happen.

Ms. SPECTOR. Yes; and we bear the criticism when we don't get the part. They don't have that investment. Beyond that, I assume they are qualified as industrial experts, though I would also assume their bias is in favor of being more permissive than we are.

We have a tremendous emphasis now on buying quality, even perhaps, when it is not from the low bidder, and the emphasis in the two agencies may be slightly different.

Chairman ECKART. What is the delinquency rate, Ms. Spector, between non-COC contracts at the DOD and the GSA?

Ms. SPECTOR. We don't keep data on delinquency rate by COC-referred contracts. We don't have good data on that. I do have examples of times where we have been overruled by the SBA and we have had serious problems with default. They do overrule us.

Chairman ECKART. Do you have a percentage or a number?

Ms. SPECTOR. I don't have a number or a percentage; I just have examples. When we asked two of the Services for examples, we received several. We don't keep the data on that. We are not trying to build a case. We are trying to present this from a perspective of streamlining and of restoring authority to the contracting officer.

Chairman ECKART. If a contract is delinquent, what are the circumstances that will lead to a decision of default on the contract?

Ms. SPECTOR. If he is terribly late—in some of these cases, we are waiting for deliveries on contracts that were awarded in 1983—we normally will bend over backwards to help him. We send out engineers. We review any concerns that he has that our specifications may not be easy to understand. We will bend over backwards, particularly in the case of a small business. I went through this experience myself as a contracting officer where we infused DOD personnel—in this case, Navy personnel—to try to help a small company.

When all else fails, our rules say you have to default, try to collect the money from these businesses, which generally we cannot do, because it is not there, and reprocure the item. Frequently this is on an emergency procurement, so that we don't get a low bidder necessarily at that point, we are out the money, and we are out the product.

Chairman ECKART. In your statement, you mention that the procurement system has become somewhat slow and cumbersome; constraining was another word you used. What are your highest priorities for reform?

Ms. SPECTOR. We have more laws applicable to the American procurement system, at least in the executive branch, than any other system in the world. No one law is magic that will make everything simple again. It is a matter of peeling away dozens of laws that make the process more complex, such as referrals when the next low bidder is also a small business. No one law, when you examine it on its own is pernicious or mean spirited. None of them are; they are all justifiable, and they all have very, very worthy goals. It is when you pile on 4,000 of them that it becomes similar to taking 4,000 vitamin pills versus one or two; you get real sick, and you can throw up. That is what we are dealing with, a system where every one of those laws on their own merit can be justified. We are putting together a proposal that would modify about 20 or 30 of them, and that would help a lot.

I wish I could give you an answer that there was one magic law that would change everything. The Post Office, for instance, has none of these laws applicable to them, and they have a far simpler system of procurement than we do.

Chairman ECKART. But you are not suggesting that the Post Office does a better job of delivering mail than you of delivering defense contracts, are you?

Ms. SPECTOR. Delivering mail, they do a better job.

I might mention, none of the congressional agencies have any of these laws applicable to them either.

Chairman ECKART. We are fully aware of what we are stuck with and, in some circumstances, most painfully in the last few days.

I have no additional questions, Mr. Chairman.

Chairman SKELTON. Mr. Sarpalius.

Mr. SARPALIUS. No questions, Mr. Chairman.

Chairman SKELTON. I would like to ask Mr. Moffitt: We have heard from the Department of Defense that it could add some 90 days to the process. Does your 14-day estimate include repeat referrals?

Mr. MOFFITT. No; it doesn't, sir. Repeat referrals happen very rarely in the total number of cases that we receive.

Chairman SKELTON. Let me ask you, what percentage of small business awards go through this procedure, Mr. Moffitt? Or maybe Ms. Spector. I'll ask both of you that.

Ms. SPECTOR. It is very, very small. About 5,000 contracts a year are referred out of millions. It is not a large percentage of the contracts.

Chairman SKELTON. Do you have a percentage, either one of you?

Ms. SPECTOR. I can tell you it is about 5,000 out of over 14 million contracts.

Chairman SKELTON. That is less than 1 percent, obviously.

Ms. SPECTOR. Yes, indeed, it is. It is a small percent, but it does serve as a disincentive for referral because of the time involved, and unless they have a strong case, contracting officers would sooner award than refer because of the time and the possibility of being overruled.

Mr. MOFFITT. In fiscal year 1988, small business awards equaled some $35 billion. Again, in fiscal year 1988, the dollar value of COC's issued was $358 million.

Chairman SKELTON. What action do you take if the contractor is starting to get in trouble, Mr. Moffitt? In the case of Economy

Pump which we have looked at, which has 12 COC's and apparently some are in trouble, why didn't your follow-up catch on to that?

Mr. MOFFITT. Well, sir, our records indicate that we issued 13 COC's to Economy Pump; 10 of those COC's were completed; 1 was terminated for default, and 2 are still open. While we are not happy about the termination for default, where the remaining contracts are open in a delinquent status, we do have an active follow-up program where we check on the performance of a contractor quarterly. If they get into difficulty or become delinquent or are a high risk contractor, we follow them up on a monthly basis. When they do become delinquent, we try to ascertain——

Chairman SKELTON. What do you do to help? Anything?

Mr. MOFFITT. Yes; we try to ascertain what the problem is: Is it a lack of finances to pay suppliers? Is it a quality control problem? Is it a problem interpreting the specifications and drawings? Whatever the problem is, we have our industrial specialists visit the firm and come up with recommendations as to how to get——

Chairman SKELTON. Does it help?

Mr. MOFFITT. Yes, sir, it does.

Chairman SKELTON. Ms. Ustad, your testimony is basically that things are going along pretty well.

Ms. USTAD. Yes, sir.

Chairman SKELTON. From your vantage point of having reviewed the program as an acquisition policymaker you would not recommend any changes to the program. Is that correct?

Ms. USTAD. Yes, sir.

Chairman SKELTON. Ms. Spector, you would change the program; you would change the law.

Ms. SPECTOR. Yes; I would.

Chairman SKELTON. In 25 words or less, what would you do?

Ms. SPECTOR. I would exempt small purchases, and I would say——

Chairman SKELTON. At $25,000?

Ms. SPECTOR. Yes, sir, or at the small purchase threshold.

Chairman SKELTON. All right.

Ms. SPECTOR. And I would say that any time the next low bidder is also a small business that we not have to refer the COC to the SBA.

Chairman SKELTON. So you would do away with the referral if another small business is in line. Is that correct?

Ms. SPECTOR. Yes, sir.

Chairman SKELTON. How often would that be the case? Do you have any idea?

Ms. SPECTOR. I would think it would be the bulk of the referrals.

Chairman SKELTON. Do you have an idea on that, Mr. Moffitt?

Mr. MOFFITT. Yes; I believe that if COC referrals were not required when the second low bidder was a small business, that would eliminate approximately 60 to 70 percent of the referrals.

Chairman SKELTON. OK.

Counsel—excuse me.

Mr. Lancaster, you just came in. Did you want to ask a question at this time?

Mr. LANCASTER. Let me just settle down first.

Chairman SKELTON. All right, counsel.

Mr. ANGELO. Thank you, Mr. Chairman.

Mr. Moffitt, in your testimony you stated that in the period 1978 to 1988 about 38,000 COC referrals were made to your agency. Of that, 15,000 took advantage. Were any of the referred in the disparity, these numbers between the 15,000 and the 38,000 direct awards and not counted?

Mr. MOFFITT. I don't believe that the direct awards are in that.

Mr. ANGELO. Are scored that way?

Mr. MOFFITT. Are scored that way or in that difference between the 15,000 and 38,000.

Mr. ANGELO. Why would a firm not want to pursue a COC?

Mr. MOFFITT. There are several reasons for that. First of all, at bid opening, they might realize that they bid too low, they left something out of their bid, so that when they were asked to apply for a COC they would just as soon not get the contract.

In addition, during the time between bid opening and the COC referral, they might have received additional work and not be interested in the contract any more.

Also, there are a number of firms that don't feel that the COC process is worth their while and decline to apply, and a number of firms are not able to meet our deadlines with their application package, so we don't receive an application package in the proper time and we close the case.

Mr. ANGELO. Ms. Spector made a suggestion that COC's be eliminated for contracts under $25,000. Last year, the SBA approved over 800 COC's. Of those, how many were for contracts under $25,000?

Mr. MOFFITT. One hundred and thirty-seven.

Mr. ANGELO. What was the total value of that?

Mr. MOFFITT. Approximately $1.5 million.

Mr. ANGELO. Do you have an average value of those contracts?

Mr. MOFFITT. The average works out to be about $11,000.

Mr. ANGELO. Does the SBA use the same procedure for a contract under $25,000 as it does for a contract above $25,000 when it is doing the COC process?

Mr. MOFFITT. No; we have a simplified procedure. Under $25,000, we don't usually make a visit to the contractor and we use a simplified application.

Mr. ANGELO. Do you still have the 15 days?

Mr. MOFFITT. Yes; we still work to the 15 days.

Mr. ANGELO. May I ask another question?

Chairman SKELTON. Go right ahead.

Mr. ANGELO. For Ms. Spector and Ms. Ustad.

I understand in the testimony that everybody has presented this morning that the delinquency rates on COC's are comparable with non-COC contracts. What is the default rate? How does that compare?

Ms. SPECTOR. Sir, we don't keep statistics on that, I'm afraid. What I have is several examples, but I don't have statistics. We haven't been building a case really on this issue, so we don't have specific data on that. I don't even know where the comparable default rate data came from, very honestly.

Mr. ANGELO. All right. Just one more quick question, Ms. Spector. If you eliminate the COC process for bids under $25,000, I understand that the contracting officer can basically select three firms to bid on an acquisition in general. How do we safeguard a small business's rights below the contract threshold if we don't have something like a COC process?

Ms. SPECTOR. Basically, the law requires us to go to the low qualified bidder.

Mr. ANGELO. I understand.

Ms. SPECTOR. What we do is, if we suspect there could be a problem or we are unfamiliar with a contractor, we have experts who go out and review his financial and technical capabilities, and we treat him as we do all contractors that we review in that regard. We preserve his rights and protect his rights, just as we do those of all of our contractors. The law is basically structured that contractors are entitled to contracts unless we can indicate that they are not capable. So it is the capability determination that we would do routinely if we have concerns as to a contractor's responsibility.

Mr. ANGELO. What was the reasoning behind Public Law 98-577, which basically required the SBA to do a COC for all contracts—I believe it was below $10,000 in those days.

Ms. SPECTOR. Maybe the SBA can better answer that, but I believe at the time the SBA work load was such that the SBA made an interpretation that Public Law 98-577 would not apply to small purchasers, and Congress came back and said that was not the intent of the law and told SBA to apply the law to small purchases. But I could be wrong on that.

Mr. ANGELO. Mr. Moffitt.

Mr. MOFFITT. Yes; at the time we amended our procedures to make it optional with the contracting officer whether or not they would refer a case under $10,000.

Mr. ANGELO. OK. Thank you very much.

Thank you, Mr. Chairman.

Chairman SKELTON. Mr. Lancaster.

Mr. LANCASTER. I do have a couple, of questions, Mr. Chairman.

Ms. Spector, you state that a fair proportion of contracts were awarded to small business firms. How do you reach the determination, or how do you calculate that fair proportion, and would this include small acquisition purchases, or would small businesses have a percentage of large procurement awards as well?

Ms. SPECTOR. Small businesses certainly participate in large purchases as subcontractors to our prime contractors and 70 percent of our prime contract actions in a year go to small business. That is 20 percent of the dollars.

I referred to this before. About 2 percent of our actions use 91 percent of the dollars, but 70 percent of our actions go to small business. We are, obviously, the largest user of small business of any of the agencies. Also, there is a substantial amount of business provided by prime contractors as well to small business subcontractors that is not included in those numbers. So we are and have been a big supporter of small business.

Now fair is not a number that you can draw a line in the sand, but DOD has been very, very supportive of small businesses, and we have a very large infrastructure of people servicing them.

Mr. LANCASTER. I know that your dollars are certainly far greater than any other Federal agencies, but how do they compare in terms of proportions of their contracts going to small business? Do you know?

Ms. SPECTOR. My suspicion is, proportionally, as a percent, we may not be as high as agencies that buy things that are more suited to small businesses. When you are buying aircraft carriers and aircraft and you are counting prime contract awards on a percentage basis, we are probably lower than other agencies. We are at about 70 percent of our actions—other agencies are probably up to 80 to 90 percent—because of the kinds of things that we buy, some of which are not available from small businesses. The Bureau of Indian Affairs or Housing and Urban Development may well have higher percentages, as well may GSA.

Mr. LANCASTER. Mr. Moffitt, how well does SBA inform small businesses about the advantages of the COC Program? Do the small businesses realize that they have a second chance in receiving Government contracts, and do they understand the procurement process and the filings for contracts when they first apply for a bid?

Mr. MOFFITT. Within 24 hours of receiving a COC referral from the contracting officer, we call the small business and we inform them that their bid is about to be rejected and they will be denied the contract unless they apply for and receive a certificate of competency. We explain briefly over the phone what the process is and ask them if they want to apply. If they indicate they do want to apply, we send them a letter with an application and a request for additional information. So we feel that they are fully informed of their rights under the procedure.

Mr. LANCASTER. We have recently had named for North Carolina a PCR. Does the procurement center representative in any way relate to this COC process? Do they get involved with the small business in trying to help them prepare the necessary documentation to show their competency?

Mr. MOFFITT. The PCR doesn't get involved during the COC process. However, our procedures require that a copy of the notice of the COC being issued to the contracting officer also go to the PCR at the installation where the award is being made so that they will be aware of the fact that a COC was being issued and that if a situation develops where we need additional information from the procuring agency we can use our PCR.

Mr. LANCASTER. If the purpose of the PCR is to enhance the likelihood of small businesses obtaining contracts, why would the PCR not be involved in this process which, in my opinion, is the most critical point in a small business getting a contract that they might otherwise lose?

Mr. MOFFITT. Well, PCR's are familiar with the COC Program. In fact, right now, today, we are holding an orientation program for all our new PCR's, and the person from North Carolina is here in Washington, and this afternoon they will be given a presentation concerning the COC Program and how it works so that they will be aware of the program and be able to counsel small businesses concerning the program so that they know their rights.

Mr. LANCASTER. Would you consider, Mr. Moffitt, making that a more important part of the PCR's work? I really do think that is an appropriate place for them to intervene on behalf of the small contract.

Mr. Moffitt. Certainly, we will be happy to look at that.

Mr. Lancaster. If you would, and if you would get back to me on that, I would appreciate knowing what you determine.

Mr. Moffitt. Yes, sir.

Mr. Lancaster. Thank you, Mr. Chairman.

Chairman **Skelton.** Thank you.

Mr. Poshard, do you have any questions?

Mr. Poshard. Yes; thank you, Mr. Chairman. I would direct my question to Ms. Spector.

Do you believe that the contracting officer should be autonomous and make the final decision concerning the awarding of a procurement contract? Even without the Certificate of Competency Program, how autonomous are the contracting officers really? Do they make the final decision on their own, or do they consult with other individuals or senior officers?

Ms. Spector. The answer is, they do consult. They get advice on a contractor's responsibility from a preaward survey that is done. Theirs is the final decision, however. They do consult with experts on virtually every decision that they make. Dealing with the large numbers of procurements that they do, they can't know everything all the time, but the contracting officer is the final decision maker on responsibility determinations. They are frequently the people who get the blame when a mistake is made; they usually are.

Mr. Poshard. That is the next question, I guess, that I had to ask. If the contract goes bad, is it ultimately those people who get the blame, or the decision-making network so diffuse that you can't pinpoint the blame anywhere or responsibility anywhere?

Ms. Spector. I may be a little paranoid, but it seems to me the contracting officer gets the blame a lot of times when it is not his fault. Having been a contracting officer myself, yes, he is usually blamed, certainly by the technical people when that part is not there or when the boats don't get delivered. The contracting officer is accused of picking the wrong contractor, and more and more he has been criticized for the low bidder syndrome, when he picks a low bidder who does perform.

Mr. Poshard. Does the contracting officer always follow the determination of the preaward survey? Do they have the flexibility to go against that? Do they award contracts that are not in alignment with the preaward survey?

Ms. Spector. Yes; but there is normally not an adversarial relationship there. The contracting officer will normally ask more questions and say, "Did you look at this?" They don't always follow the advice of any single individual, including DCAA, or their lawyers; they don't always follow all the advice that they get, clearly not.

Mr. Poshard. Is there a ball park figure that you could give me in terms of how often they stray away from the preaward survey? I don't want to make that sound pejorative, but you say that they don't always follow the preaward survey. On what kinds of evidence would they base a decision against the preaward survey? How often would they do that?

Ms. Spector. I would say it is not frequent. However, in the case of this referral process, if the contracting officer doesn't feel he has an ironclad case it takes too much time to refer to the SBA. Therefore, if he doesn't feel that it is a clear-cut case with the small business and that he will be supported the SBA he may award in the face of a negative preaward survey. So the COC process may serve in some circumstances, as an incentive to award to a marginal contractor. I believe that to be the case. I don't have data on numbers.

Mr. POSHARD. Thank you.

Chairman SKELTON. Counsel.

Mr. ORBAN. Yes; Mr. Moffitt, one question in regard to getting the message. We heard from Mrs. Spector who said that there are cases where they know a low bidding small business has not fulfilled its contract since 1983. We saw the case of Economy Pump where COC's kept coming in spite of some questionable performance.

Is there a method—do you have in existence now a method where a contracting officer can sound an alarm if he has to get the message through, either for national security reasons or for just common sense, that the SBA should not award a COC? Can they go to the national office or at least bring to someone's attention that this is going to be a mistake? Or is it just a case where the COC is awarded and that is the end of it?

Mr. MOFFITT. COC referrals go into our regional offices around the country where the firm is located. The regional office staff conducts the review, and a committee meets to decide whether or not the COC is issued. If the committee, after considering the information provided by the contracting officer and the small business firm and information gathered through our own investigation, if they come to an affirmative decision—in other words, they recommend issuance of the COC—the contracting officer is contacted before the COC is issued and given a series of options. One of the options is to come in and meet with the regional people to discuss the case further and provide additional information concerning the firm's capabilities.

Another option is to appeal the case to higher authorities. In that case, the matter would be referred into SBA headquarters here in Washington and also go from the contracting officer through the chain of command up to the Secretary's office, and a meeting will usually occur between SBA headquarters and the Secretary's office of the contracting agency.

Mr. ORBAN. Are you aware of any case where the Secretary of the contracting agency has requested that you not issue a COC where you have issued a COC?

Mr. MOFFITT. Yes; there are cases where we have gone through the complete process and have issued the COC over the objections of the——

Chairman SKELTON. How have they worked out?

Mr. MOFFITT. Generally, they have worked out and the contractor has performed.

Mr. ORBAN. Thank you.

Chairman SKELTON. Thank you very much.

If there are no further questions, we wish to thank this panel—Mr. Moffitt, Ms. Ustad, and Ms. Spector.

It has been painless, hasn't it?

Ms. SPECTOR. It wasn't bad at all.

Chairman SKELTON. Thank you. Our next panel is panel number two: Thomas Dumaresq, the ARA-PA Assistant Regional Administrator, Small Business Administration Region II, New York; Mr. Albert A. Matera, Supervisory Contract Specialist, Federal Supply Service of the GSA; Mr. Harold E. Popplewell, president of IntelliSys, Inc., from New York; and Mr. Terrence H. Martell, president of Airborne Industries, Inc., of Akron, OH.

Shortly I will turn the gavel over to the gentleman from Ohio, but in the meantime we would ask that you begin. Let's begin with Mr. Matera.

TESTIMONY OF ALBERT A. MATERA, SUPERVISORY CONTRACT SPECIALIST, FEDERAL SUPPLY SERVICE, GENERAL SERVICES ADMINISTRATION

Mr. MATERA. Good morning, and thank you.

I am a contracting officer with GSA's Federal Supply Service in the Office and Scientific Equipment Commodity Center. My contracting officer's warrant allows me to award and administer contracts for an unlimited dollar value. I have also been appointed as a certified public purchasing officer by the National Institute of Governmental Purchasing.

I have been involved in the acquisition process since 1976, first as a contract specialist and, since 1983, as a supervisor. I currently supervise 10 employees, 8 of which are contract specialists whose principal duties are the negotiation, award, and administration of contracts.

My current program responsibilities include the award and administration of contracts under three Federal supply schedules covering copying equipment and special industry machinery such as bookbinding equipment and paper shredders. These schedules comprise approximately 100 national-scope contracts with a total value of almost $1.5 billion.

Many of the offers submitted in response to our various solicitations are from small business. The Federal acquisition regulations require that the contracting officer make an affirmative determination of contractor responsibility before the award of any contract. In some instances, like other contracting officers, I have made determinations of nonresponsibility, usually due to inadequate finances or facilities, which require the matter to be referred to the SBA for consideration of issuing a certificate of competency.

My overall personal experience with the COC Program has been positive. The COC Program provides a service for the small business community by giving such firms an opportunity to be determined responsible through a review of the contracting officer's determination. Although some small businesses do experience problems in performing a contract awarded as a result of a COC, most firms perform satisfactorily. The potential for delinquent or unsatisfactory performance will always be greater when the firm has one or more marginal elements of responsibility.

Communications between contracting officers and SBA industrial specialists are usually adequate but may vary on a case-by-case basis. In referrals to SBA, the contracting officer submits a formal finding and determination of nonresponsibility which notes the areas where the firm is lacking. While responsibility is ultimately the determination of the contracting officer, these findings and determinations are reviewed by our Office of General Counsel.

The amount of communication that occurs between the SBA and the contracting officer depends on the particular case involved. My main concern with respect to the matter of communications is that on some occasions when a COC is issued, the contracting officer is not provided with the supporting rationale.

preaward surveys are the first step in responsibility determinations. In GSA, these surveys are conducted by our Office of Credit and Finance and our Office of Quality and Contract Administration. In most cases, the preaward survey findings are accepted by the contracting officer, especially if favorable. This should not be construed to mean that preaward surveys are automatically accepted; it is not unusual for a contracting officer to override a negative survey and award a contract. However, in such a case, the contracting officer must obtain higher level approval.

The preaward survey concerning a bidder's financial standing is made by financial analysts. These analysts rely on various bidder-provided documents such as balance sheets, profit and loss statements, and annual reports, as well as other sources of information like Dun and Bradstreet. Reasonable timeframes for the furnishing of this information are imposed on bidders in order to ensure timely contractual actions. In virtually all cases, every effort is made to accommodate a bidder who needs more time to assemble or complete the information required. Additionally, when capability or capacity is involved, a quality assurance specialist performs an inspection of the bidder's plant and makes a recommendation to the contracting officer.

Once a bidder has been determined nonresponsible, he normally is advised of this fact and the reasons for the determination by the contracting officer. He is also informed that the matter will be referred to the SBA for eligibility under the COC Program.

As in the case of any program, there are costs. Perhaps the main cost of the COC Program is that under some circumstances the time involved to process the COC results in a delay in the award of the contract.

The chief benefit of the program is that it ensures that small business concerns are afforded a fair opportunity to receive Government contracts. I do not have sufficient information to determine whether the benefits outweigh the costs.

This concludes my opening statement, and I would now be happy to answer any questions you may have.

[Mr. Matera's statement may be found in the appendix.]

Chairman ECKART [presiding]. Thank you very much.

Mr. Dumaresq.

TESTIMONY OF THOMAS DUMARESQ, ARA-PA ASSISTANT REGIONAL ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION, REGION II, NY

Mr. DUMARESQ. Good morning.

I am pleased to be here today to talk about the Certificate of Competency Program. I believe that the statement of Mr. Moffitt covers most basic information regarding the history and current operation of the program. I will try to provide a working level perspective of our field operation.

The following is in response to the questions raised in your letter to the Administrator dated May 30, 1989:

First, how well does the contracting officer from the procuring agency relate his or her opinions about the adequacy of the small business applying for the contract? Is the preaward judgment detailed enough to justify the contracting officer's preliminary determination?

In general, preaward surveys and determinations of nonresponsibility do contain sufficient information to allow identification of the specific problem that led to the COC referral. Too often, however, the contracting officer does not have an opinion regarding the bidder beyond the fact that a negative preaward survey recommendation was received. In some cases, the contracting officer actually has a favorable opinion regarding the bidder as a result of acceptable performance on prior contracts for the identical item. Nevertheless, the negative preaward recommendation will almost invariably lead to a determination of nonresponsibility.

Since the contracting officer is often interested primarily in the recommendation rather than the basis for it, communication with our office concerning the facts that led to the negative survey is usually limited. We will, depending on the circumstances, communicate directly with the individuals that performed the preaward survey, the cognizant Government inspector and/or industrial specialist, as well as technical personnel at the buying activity. We make every effort to ensure that we fully understand the basis for the negative recommendation. We are acutely aware that there is absolutely no benefit to either the small business or the Government to award a contract that is beyond the capability of the bidder. If a problem does exist that might impact performance, it is essential that we are aware of it.

It should be noted that most negative preaward survey recommendations, particularly those performed by DCAS's office are based on the bidder's performance record. This factor alone, however, is not always indicative of a firm's ability to perform on the procurement in question. For example, small firms often have two or more separate product lines. Poor performance in one line may have absolutely nothing to do with performance on the other. Often, it makes little sense to deny a contract award in one area based on problems in the other.

In some cases, considerations of this type are taken into account during preaward surveys, but I believe that too much emphasis is currently being placed on a simple evaluation of a prospective contractor's delinquency rate. This relates to the question of communication in two ways.

Preaward offices, like DCAS, correctly take the position that they are just making recommendations to the contracting officers who must then make final determinations regarding the bidder's responsibility. As a result, policies can develop with the idea that the contracting officer will override the negative survey if the policy does not fit the particular situation.

For instance, a firm's inclusion in the Contractor Improvement Program may automatically lead to a negative preaward survey recommendation based on local DCAS policy. This negative recommendation may not be justified, however, based on the particular facts of the situation. I do not believe that communication between the preaward office and the contracting officer is adequate to insure that the negative recommendation will be overridden if the circumstances warrant such action.

In addition, the COC Program offers another avenue of communication among all the parties involved in this process. Many times, personnel from the buying activity receive information from SBA that resolves doubts about a company's ability to perform on a particular project. The bidder often gets a much better understanding of the requirements of the procurement as well as an awareness of the problems identified during the preaward survey. Resolving problems between the agency and the small business bidder is a major objective of our program.

The second question is: Is there adequate communication, either by mail or by telephone, between the contracting officer and the SBA procurement officer before the COC is issued?

Again, one of our primary goals is to ensure that an adequate line of communication is established. Generally, we are successful. In every case, the contracting officer is notified of SBA's intent to issue a COC as well as their appeal rights. A COC is never issued at the regional level without the acknowledgment of the contracting officer. At times, preaward personnel are apparently not consulted prior to acceptance of a COC by the contracting officer, but this is clearly a communication problem outside the control of SBA.

Is 15 days sufficient for the SBA procurement officer to determine whether or not a small business is capable of handling the contract?

The 15-day time frame is adequate in most cases for our review. A small firm going through the process for the first time often needs additional time to get application paperwork together, but extensions can be negotiated with the contracting officer, and generally this does not create a problem. A recommendation to issue a COC is virtually always made by the established deadline.

After the COC is granted and the contract is awarded to a small business, how often does the SBA procurement officer contact the business to follow the progress of the contract, and what does the SBA do if the contract is delinquent or the quality standards are found to be below par?

The required frequency of follow-up reviews on certified contracts was described in the testimony of Mr. Moffitt. In my office, follow-ups are performed in accordance with these established guidelines. Sometimes, contracts are reviewed on a more frequent basis if we anticipate that a problem may develop. Our purpose is to ensure that all work is completed in accordance with contractual requirements.

We currently conduct monthly meetings with all COC specialists in the region to discuss each open COC that is delinquent or expected to run late. Most of our COC specialists are former Government inspectors, and each has a different area of technical expertise. By discussing each problem case together, we can normally identify an appropriate course of action to get the contract back on track if it is possible. Actions might include getting the company together with technical representatives from the buying activity to clarify specifications, contacting suppliers to improve material delivery dates, or working with the small firm to get their quality system up to speed.

The results of these activities show up in the performance record on the certified contracts. Our delinquency rate is currently around 15 percent—that is in New York—and we expect it to drop below 10 percent by the end of the fiscal year. In contrast, the corresponding DCAS region, I believe, has a current delinquency rate of roughly 30 percent on Category I contracts. Category I contracts are the most critical, high dollar value contracts monitored by DCAS. Our performance relative to contracts in other categories is similar.

During a 10-year period beginning in 1978, I performed hundreds of COC surveys and follow-up reviews on small businesses throughout SBA's Region II, which encompasses New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands. I have seen first-hand how the COC Program is critical to the success of many small firms that are trying to either become established or reestablished in the Federal procurement arena. I believe that a large proportion of current small business contractors in Region II, at some point in their development, received assistance through the COC Program.

Clearly, the COC Program has proven itself to be extremely beneficial to both the small business community and the Federal procurement system as well.

This concludes my prepared statement. I would be pleased to answer any questions the committee may have.

[Mr. Dumaresq's statement may be found in the appendix.]

Chairman Eckart. Thank you very much for addressing the questions of the committee.

Mr. Popplewell.

TESTIMONY OF HAROLD E. POPPLEWELL, PRESIDENT, INTELLISYS, INC., SYRACUSE, NY

Mr. Popplewell. Thank you, Mr. Chairman.

I would like to make a request. Since my written testimony is before the committee, I would like to submit it as my statement and use my oral comments to be somewhat anecdotal about our experience with the COC Program.

Chairman Eckart. Without objection, all of the witnesses' written remarks will be made part of the complete record. You may proceed to summarize as you see fit.

Mr. Popplewell. Thank you. It is my belief that the legislation bringing COC into existence was enacted to protect the national economic interest through better competition and through allowing small businesses to compete fairly. I think there is a windfall from that which has been ignored. That is, most innovation comes from small business.

IntelliSys is a company that actually spun off from the General Electric Co. a few years ago. When Thomas Edison started the General Electric Co., it, too, was a small business—about three people, as a matter of fact—and, through a patent about every 10 days since then, has grown to be quite a large business.

We believe that the COC Program has a huge windfall beyond the economic interest of competition because of this innovation, and I think that it is fairly common knowledge in the business literature that most innovation comes from small business.

I would like to describe the process—we have only one COC in our company—and describe what we went through in that particular instance. We were bidding a program referred to as the 20F16 Program, which is a sophisticated training device, with the Naval Training Systems Center. In this particular trainer, the requirement was to some extent, derived from problems similar to those experienced the U.S.S. *Stark* and the U.S.S. *Vincennes* in the Persian Gulf.

The Navy's studies showed that their equipment worked aboard ship, and that the people knew how to use that equipment. The problem was that they did not know when to use it in a tense, time stressed, tactical type situation; the tactical decisions themselves were at fault. These skills, today, really cannot be practiced outside of warfare.

IntelliSys has invented a real-time artificial intelligence system capable of simulating Soviet forces or friendly forces, et cetera, and showing those forces via what looks like ship's equipment to tactical decision-makers in a shore-based school and put them through very, high pressure, time stressed, multithreat type exercises whether at wartime or in peacetime or in the Persian Gulf or wherever, and test their ability to make those tactical decisions accurately. Save the ship, protect lives, and win the war, if you will.

We bid the contract at $6.9 million. The Navy's budget was $15.9 million. Obviously, they thought that we left a little bit of money on the table! The next lowest bidder was $11.9 million. We were able to bid that contract at $6.9 million because of this real-time artificial intelligence invention which we have since submitted for patent.

We had a preaward survey, and we were judged to be financially responsible, production responsible, technically responsible, but because specifically we had not manufactured an item to MIL-Q-9858A quality assurance we were denied the contract, regardless of the fact that our proposal was entirely commercial off-the-shelf equipment and therefore we were doing no manufacturing. This was mildly upsetting to myself and to the other principals of the business. We were a small company, 18 people.

I have a great deal of respect for the Small Business Administration folks that we came into contact with. In the initial 15-day period, we were required to produce a submittal that showed that we had a quality assurance program in place, that we knew how to do the software involved—everything.

In 16 days, we prepared a 600-page submittal for the Small Business Administration, and, beyond that, they came in, using that information, and spoke to every one of my employees as well as to our suppliers. They correlated all of the information such that the cash flow and the production schedule and everything else was shown to be accurate.

At that time—in fact, before I even knew that we had gotten the COC, I wrote a letter to the head of the Small Business Administration saying how well I thought of that examination for two reasons: First, it was the most thorough examination that we had undergone, including those by the venture capitalists and the bankers, not to mention the Government; second, the process of preparing that 600-page submittal ourselves to prepare it made us that much more qualified to start the contract in the first place; we knew what we were doing when we hit the ground at that point.

I am happy to say that we are nearly a year into the contract. We have never missed a milestone. We have been early or on time in each and every case. We have no quality problems whatsoever. The trainer will be delivered on time, and, in fact, very surprisingly to me, we recently received a modification to the contract saying that because we had commercial, off-the-shelf equipment, MIL-Q-9858 was not required for any of that equipment. I found that to be fascinating considering their preaward finding.

I have two specific recommendations. One derives from delving in my own mind into how a small business contractor to the Government can fail. There are a couple of big items that can cause failure other than true nonresponsibility. One of them is an interpretive difference between the Government and the contractor. At General Electric, of course, we had a large body of counsel, et cetera, to assist with that interpretation.

I would recommend that the charter and the budget for the COC Program be expanded to include an interpretive organization that would assist the contractor in saying how much is enough. We are producing 100,000 pages of data items for this contract. As a matter of fact, I have to tell my own people that the data items themselves are at least as important as the system working. To a small business contractor that is a fact, because termination would result if the data were of poor quality, or late, or anything else. At the point of contract the company signs up to the Government specification which may or may not reflect the user's need.

In addition, I would recommend that there is no substitute for attending Government reviews between the contractor and the Government. The Small Business Administration does monitor us very closely; we submit our data items to them as well; they do call us not only on a quarterly basis but on a monthly basis, and we routinely communicate with them in that regard at their request.

But attending Government reviews, you can see the interaction between the company and the Government client, and I think that is an invaluable aid in being able to avoid the risk of potential failure.

With regard to the critics saying that the COC delays procurement, I suppose that it does increase the time by 15- or 20-days or so, but I am shocked that it goes 158 days without the COC Program!

I had a couple of programs at General Electric where we built to best commercial practice and were able to perform the contract in exactly half the normal time. That was accomplished through, I think, exceptionally good Government procurement people who stayed as close to us as the Small Business Administration does now during the course of that contract and avoided all unnecessary data items and so forth.

Obviously, IntelliSys would not be in business now, I believe, if it were not for the COC Program. Were we not in business the Government would not receive the great benefits of our real-time artificial intelligence system and would be paying $5 million more for the CTT trainer while receiving a trainer that is less effective than our design. I can't believe that this sort of savings is not well worth the 15-day delay in contract award. That concludes my remarks, if I could entertain any questions.

[Mr. Popplewell's statement may be found in the appendix.]

Chairman **Eckart**. Thank you. It is indeed a pleasure to hear a success story, and Heaven forbid that we save that kind of money.

Mr. Martell, you have been very successful with the Thomas Edison Program in our home State of Ohio, a program that has received some good national applause, and I am very grateful that you could be here not only because you have been successful but because I think you bring a good perspective that we need to hear. Mr. Martell.

TESTIMONY OF TERRENCE H. MARTELL, PRESIDENT, AIRBORNE INDUSTRIES, INC., AKRON, OH

Mr. **Martell**. Thank you.

Airborne Industries is a small family business that manufactures specialty electronic, communication, and electromechanical devices for military and commercial markets. The business was started 5 years ago as the first tenant of the State of Ohio Thomas Edison Incubator Program in Akron, OH.

Our first Government contract was for $27,000 to the Naval Supply Center and was certified by the SBA under the COC Program. In the last years, our employment has increased from 6 to 35 employees. We have applied for eight COC's, received six, completed three, and currently have three open COC contracts. The value of all these COC contracts is $2.4 million. Our prime Government contract backlog is about 80 percent of our total backlog.

At the time of submitting a bid or proposal, there is usually no communication from the procurement contracting officer to us. Rather, DCAS personnel inform us that they have been directed by the procuring agency to conduct a preaward survey on a specific solicitation.

Normally, the preaward survey team from DCASMA Production and Quality conduct an on-site survey while financial information is formally requested in writing and returned by mail to the DCAS office. DCASMA personnel do not share with us the results of that audit. Normally, we do not know the results of a PAS until the SBA notifies us that we have failed the preaward survey and asks whether or not we want to apply for the COC.

The timeframe involved in requesting a COC application and its completion and return is approximately 7 to 10 days. The COC application is a comprehensive review of our company, including a complete plan for all phases of the contract, a detailed production plan, quality assurance program, supplier and subcontract survey, and a host of Government forms—74, 74(a), 74(b), and 355. The SBA then sends its own audit team to our plant to conduct an on-site survey.

Once a COC contract is awarded, the SBA representative monitors our progress on a quarterly basis and offers technical assistance regarding procurement policies, the FAR, quality issues, and contract administration.

I think the COC Program is vitally important to small business. In my opinion, the preaward survey/COC process can be improved by the following methods:

First, requiring DCASMA personnel to conduct a preaward survey exit interview wherein they identify any problem areas then. This allows the contractor adequate time to correct any deficiencies.

Second, lengthening the time for the COC application. We basically have 5 days to compile information that would fill a small town telephone book.

Third, require DCASMA to evaluate for approval contractor quality systems. Currently, DCASMA audits are based on a "Guess what I'm thinking?" philosophy and reflect only those items found not to be in compliance.

Fourth, reevaluating DCASMA policies regarding delinquencies in those cases where a contractor, in good faith, has been granted and paid for an extension in delivery schedule. DCASMA penalizes the contractor by recognizing only the original delivery schedule.

Budget cut backs and other changes in Government procurement will tend to reduce the number of spare parts contracts and will create fewer higher dollar value individual contracts of several items Where one spare part contract might be worth $100,000 or so, basketing several items together could increase the contract value to several millions of dollars. Thus, basketing spare parts solicitations in this way by the DOD, in my opinion, will exacerbate negative preaward surveys, put greater pressure on the COC process, reduce competition, and prevent many small businesses from being able to compete for prime Government contracts.

I might add parenthetically that we do business with the Army's Communications Electronics Command, among others. Normally, they require a 90-day delivery of our bid up front. Also, our small company is now a prior approved source for an item where we went through the preaward survey COC process. Thank you.

[Mr. Martell's statement may be found in the appendix.]

Chairman ECKART. Thank you very much to all our witnesses on the panel.

Mr. Campbell.

Mr. CAMPBELL. Mr. Chairman, I don't have any questions at this time. I appreciate your holding the hearing. Thank you very much.

Chairman ECKART. Minority counsel.

Mr. ANGELO. Thank you, Mr. Chairman.

Mr. Matera and Mr. Dumaresq, I am looking at something that I think is inconsistent here in both of your testimonies, in both instances on page 2. Mr. Dumaresq says:

> Since the contracting officer is often interested primarily in the recommendation rather than the basis for it, communication with our office concerning the facts that led to a negative survey is usually limited.

Meaning, I take it, nonspecific, vague, or whatever. Mr. Matera says:

> In referrals to SBA, the contracting officer submits a formal findings and determination of nonresponsibility which notes the areas where the firm is lacking.

Is this inconsistent, or is this consistent, or what is going on here?

Mr. **Dumaresq**. What I am talking about in terms of communication is verbal communication back and forth during the survey process. From your question, I guess it is a little misleading because my first statement is that the referral itself is adequate to identify the basis of the turndown, the basis of the denial.

Mr. **Angelo**. It is specific.

Mr. **Dumaresq**. Yes; the preaward surveys usually are; for the most part, they are.

Mr. **Angelo**. I know it is required in the COC, but I was worried that it wasn't specific or vague.

Mr. **Dumaresq**. The rule is that they are pretty good. There are cases where companies get turned down over and over again. Sometimes you don't get preaward surveys. As I say, it depends, but for the most part they are good and identify the basis of the turndown.

Mr. **Matera**. That is essentially correct. Sometimes the communication is not necessary, and to give an instance after the initial findings is forwarded to the SBA, there may not be a whole lot of communication between the SBA and GSA after the referral. All the facts are in that referral.

Mr. **Angelo**. I see. You also make a statement, Mr. Matera:

> My main concern with respect to the matter of communications is that on some occasions when a COC is issued the contracting officer is not provided with the supporting rationale.

Does that happen often?

Mr. **Matera**. In my experience, I cannot give any figures or statements based on other contracting officers, but in most cases of the COC's that I refer, we normally just get a letter back stating that we have decided to grant a COC, and in many cases there is just no supporting rationale for that COC.

Mr. **Angelo**. Mr. Dumaresq.

Mr. **Dumaresq**. After we make a recommendation out of a COC committee meeting, and whenever we have a recommendation to issue a COC, the first thing that we do is contact the contracting officer by phone and explain his rights of appeal to him. This is followed by a summary of the basis for the recommendation. In some cases, we are dealing with the same company; sometimes we are dealing with the same contracting officers. If it is clear that the contracting officer doesn't need a summary or doesn't request it, we might not send one. There should be no case where we don't offer it to the contracting officer.

What my experience has been—and I think I indicated in here some place—where this question comes up, we have notified a contracting officer and a buyer of our recommendation and maybe spoken to them about the basis for it. When the COC is issued, the preaward people were not involved in that process and were not given the basis for the recommendation, and we hear that from them. But the contracting officer—that is available to any contracting officer before a COC is issued.

Mr. ANGELO. Mr. Popplewell and Mr. Martell, both of you had complaints about access to preaward survey findings. Do you feel that if you had the finding when it was made that it would probably accelerate the COC process or aid in your rebuttal of this preaward survey rather than waiting until the COC process begins?

Mr. POPPLEWELL. I certainly believe that to be true. We had a great deal of trouble obtaining the findings and had to go to special counsel and go through a formal Freedom of Information Act request. By the time we got the finding, the COC was finished. We could have perhaps avoided the entire issue by having a couple of days to look that over and make a case that perhaps DCAS did not understand that all of our design was off the shelf.

Mr. ANGELO. Why would an agency not share that information, Mr. Matera? Could you tell us?

Mr. MATERA. Usually when we make the initial findings of nonresponsibility, we will tell the prospective contractor the reasons for those findings. In some cases, if he asks, we will send him a copy of the preaward survey, whatever information he needs to know as to why he was determined to be nonresponsible.

Mr. ANGELO. Mr. Popplewell indicates that he had to use the Freedom of Information Act to get his.

Mr. MATERA. That has not been my experience in my agency, sir.

Mr. ANGELO. OK. Mr. Martell, you have six COC's. Are any of those under $25,000?

Mr. MARTELL. Currently not. The first one was about $25,000.

Mr. ANGELO. It was $27,000.

Mr. MARTELL. Right.

Mr. ANGELO. OK. just one quick comment, Mr. Chairman.

In your ending testimony here, Mr. Martell, you raise a very crucial issue regarding what you call basketing, what we call consolidation or bundling, where an agency tends to aggregate a number of small contracts. This does tend to preclude small business participation in Government contracting, and there are currently two bills that would militate against that, one by Louise Slaughter which deals specifically with spare parts, and the other by Congressman Silvio Conte and Congressman Ike Skelton which would require a small business impact statement whenever an agency intends to aggregate a contract. I would just like to notify you of that.

Mr. MARTELL. I certainly commend that.

Mr. ANGELO. Thank you, Mr. Chairman.

Chairman ECKART. Counsel.

Mr. ORBAN. I have a question for Mr. Popplewell and Mr. Martell.

You heard earlier, if you were here for the previous testimony, that there were two proposals made by the DOD to change the structure of the COC Program. One was to not follow the COC Program for awards under $25,000; and the other was to go with a second small business in contracts over $25,000 where the low bidder was a marginal performer or found to be not responsible.

Do either of you have comments on those proposals by the DOD? I know your contract wasn't under $25,000, but it was close. What I would like to get is a feel for how important these contracts are to small businesses and what your comments would be on these programs.

Mr. **Martell.** In my opinion, the process is vital. People make the determinations at the local level. They make their recommendations. We have been denied, or evaluated, in preaward surveys, and normally they come in three directions: quality, past performance, or financial.

We were finally awarded a COC contract for $1.4 million. The negative determination in the quality audit determined that we didn't have enough inspectors to perform the contract, which was true. By the same token, we were going to hire 15 people and have the inspector, but that never became part of the process. We were denied.

Also, the COC process allows a small contractor like myself to upscale, to go from a $200,000 contract to a $1,400,000 contract and to perform that contract, and we are delivering on time.

Also, the issue of deliveries: We build spare parts, and we save the Government money, we believe. Many times, the subvendors who provide the parts that go into the assemblies that we, in turn, make for the Government are made by spec control or source control vendors who, in turn, may not meet their delivery schedules to us. We, as the prime, are held accountable for that.

In those cases where we have to give back money or extend a delivery schedule, we find that in various kinds of compensation, but since we have paid that penalty the DCASMA people, when they evaluate us during the preaward survey, look at the original delivery schedule only, and that is germane to them. So when they look at those items, those three things stand out.

So I think the system is good because it allows everyone to compete fairly and together, but there are some flaws within that system.

Mr. **Orban.** Mr. Popplewell.

Mr. **Popplewell.** I would strenuously object to their awarding it to the next lowest bidder if that business was a small business for two reasons. One would hope that the ability to bid lower is due to some new idea, some innovative means of performing that contract. The Government should obviously secure that savings. Further, the new idea can be migrated to other procurements obtaining tremendous savings.

If, on the other hand, as one of the previous witnesses testified, you were much, much lower and you had no innovation, then typically you would turn down the contract because you forgot something.

Second, according to which industrial code the procurement agency uses to determine whether that procurement is a small business or not, you could be dealing with businesses that are really quite large, that are considered to be small businesses, up to, I believe, $30 million and perhaps up to 500 or 600 employees, which would preclude one of the special intents of the COC Program which is to aid the small business who is attempting to get a Federal contract for the first time. Awarding to the next-lowest small business would not allow the new company to compete fairly, would cost more money, and would undoubtedly strangle important innovations and new ideas. As a Nation we cannot afford to lose the opportunity for innovation and cost savings provided by the COC Program.

Mr. ORBAN. Thank you, gentlemen, for your answers. Thank you, Mr. Chairman.

Chairman ECKART. Tom, how do you pronounce your last name?

Mr. DUMARESQ. Dumaresq.

Chairman ECKART. Dumaresq.

It was probably more appropriate to ask that at the beginning of the hearing than at the end.

Do you have any examples of initial contracts not going forward, just so a small business can get the contract through a COC?

Mr. DUMARESQ. I'm not sure I understand what you mean. Not going forward because the——

Chairman ECKART. The contract officer will refer the bidder over to the SBA in order to get the COC so they don't have to make the judgment call themselves.

Mr. DUMARESQ. It is difficult to give specific examples of something like that. I also wouldn't want to give the impression that that happens all the time. For the most part, I think the contracting officers are making valid determinations based on the information they are getting out of the preawards.

I do get telephone calls occasionally after a COC is denied, for instance, and the contracting officer will tell me, "Why did we deny a COC? We thought SBA issued all COC's. We need this guy." So it does happen.

I would say that the point there is that for a small business, when they are dealing with the Government—DOD—they are dealing with a big bureaucracy, and you are seeing part of the bureaucracy there. It is not a criticism, I don't think, of the contracting officer that he would be using input from different places to make his determination. I think it has to work that way.

From a small business perspective, though, a small business just going through the process for the first time doesn't know what the system is, doesn't know what the contracting officer is looking for, they are talking to different people with very specific roles, and they may not give the right answers or make the correct presentation. Oftentimes, there are guidelines that are given to the industrial specialists, the preaward people, and things like that.

If the turndown becomes automatic, in the case of IntelliSys, for instance, at the time that that was done, or for the past few years, there has been a policy on and off that if a company doesn't have an existing QC system to whatever the requirement is, be it 98-58 or 45-208, that may result in an automatic turndown. At one time, it definitely did. Now it may not, but it certainly can lead to it; it may have here.

A contracting officer, for the most part, will be reluctant to overrule a negative preaward, especially for a large dollar value item or with a brand new contractor, although it may be to their benefit. I don't know if I could give you specific examples of that, but I am convinced that it happens. It has been my experience that that does happen, yes.

Chairman ECKART. I could only reecho the line of questioning from our minority counsel in the spirit in which he pursued it. It doesn't seem, at least, fair to me that when you go through a preaward survey, you can't get the information back. I hope it is not the normal course, but it doesn't seem to me that the Freedom of Information Act ought to be a normal way for us to have to proceed here.

It is my understanding that a number of negative awards are referred to the SBA for lack of financial resources. Mr. Matera, do the preaward analysts give small businesses ample time to pull information together, particularly concerning financial standing?

Mr. MATERA. The normal timeframe used in GSA to get information back is 10 days, set by our financial personnel. If they don't give the information back within that 10 days, the contracting officer is notified that the firm failed to respond to the financial office's inquiry.

When this happens I turn that over to my contract specialist actually handling the case, and I say, "Please get on the phone and tell this company to please get their financial information to our finance people for them to analyze," and we, in turn, will call the financial people and say, "Reopen the case; keep this alive," because in some cases some small businesses, for whatever reason, do not have enough time to get all the information to our office within 10 days, and we do not arbitrarily reject them at that point.

Sometimes that process goes on an extremely long time, and sometimes we do have to take certain action, but again, as in my testimony, we do try to give them every benefit of the doubt to get their information to our financial people so that some determination can be made.

Chairman ECKART. Mr. Martell or Mr. Popplewell, do you have any comments as to Mr. Matera's representations in terms of the ability for you all to marshal financial information?

Mr. POPPLEWELL. We have never experienced any difficulty with that with DCAS in this regard.

Chairman ECKART. Mr. Martell.

Mr. MARTELL. We have experienced difficulty in financing Government contracts occasionally. Of the eight that we have applied for, three, I believe, have negative financing characteristics as determined by the preaward survey monitor. In all cases, they would send us a letter and ask for it back within a week: "Tell us how you are going to finance this contract;" and we try and tell them. If there are progress payments available, that is a financing tool; credit from vendors, any existing credit lines we may have from local financing institutions.

On one occasion, the representatives at the DCAS simply misread part of our statement, and that came up during the COC process. In the other two cases, they were right. Sometimes when you are a small business, you try and scale up and get more business. You have to balance what you can handle and what you want to do in the future, and that is problem.

I think the SBA's bias sometimes is good for us, because they don't want us to get too many contracts at one time. The problem is that they don't want us to not deliver, and if we suddenly get a lot of COC contracts and they have multiple delivery schedules that compound on each other, that does nothing but create problems for the contractor and therefore that system.

Chairman ECKART. Mr. Matera, I guess a couple of these answers raise a question. How old can the preaward survey information become when considering a bidder for a contract? When a small business, in other words, applies several times a year, for instance, how often is the preaward survey information updated?

Mr. MATERA. Normally, with respect to financial information, we will get those quite frequently on every contract. With respect to capability and capacity, if the product is the same or a similar item, we normally do not request a plant facility's report on the same company. If they have already performed before, there is really no sense in getting another plant facility's done by a quality assurance specialist.

Chairman ECKART. Are you suggesting then that there has to be some material change in circumstances in terms of the plant facility's report?

Mr. MATERA. Yes; there would have to be. Again, with the commodities that I buy, I am assigned a given group of commodities, and that commodity is fairly consistent. I buy copiers and shredding machines. Those companies continue to make those items. If one company was building item A and they switched to item B, which was quite a bit different, then we would definitely get another plant facility's report.

Chairman ECKART. How detailed is the information that is forwarded by the contracting officer to the SBA to rationalize the negative ruling?

Mr. MATERA. Generally, I believe it is sufficient to give the SBA the exact reasons for the determination. Often, we do rely on the preaward survey for the determination. They are the financial experts, the quality assurance specialists. We are not there first hand, so we have to rely on advice of others and make a decision, and we normally give SBA a copy of that plant facility's report, financial report, or both, as the circumstances may indicate, and also give them a copy of what we call and F&D—findings and determination—as to why we determined that particular vendor nonresponsible.

Chairman ECKART. Are there any additional questions?

If not, I would like to thank the panel very much, particularly our witnesses, who traveled here at their expense to assist us.

There being no further business to come before the subcommittees, we stand adjourned.

[Whereupon, at 10:45 a.m., the subcommittees were adjourned.]

APPENDIX

SILVIO O. CONTE
First District, Massachusetts

COMMITTEE ON APPROPRIATIONS
Ranking Republican Member
Subcommittees:
Labor—Health and Human
Services—Education
Transportation
Legislative
Ex Officio Member
of all Subcommittees

COMMITTEE ON SMALL BUSINESS
Subcommittee on
Procurement, Tourism, and Rural
Development

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Opening Remarks
Honorable Silvio O. Conte
Hearing on SBA's Certificate of Competency Program
June 7,1989

Good Morning Mr. Chairman. The SBA's Certificate of Competency Program is an important, cost effective function of the administration in fulfilling its mandate of insuring that small business receive its fair share of federal contracts. Although relatively problem free, the COC Program has not been reviewed in a number of years. It is important that we review the management and effectiveness of the program as part of an overall strategy to increase small business participation in federal contracting opportunities. It is a great pleasure to hold a joint oversight hearing with our distinguished colleagues from the subcommittee on Antitrust, Impact of Deregulation and Privatization. I am sure it will make for an interesting and insightful hearing.

COC's are authorized by section 8(b)(7) of the Small Business Act. It is, in effect, an appellate procedure, a right of appeal to a small business concern whose bid or proposal for a contract was rejected for: 1) lack of responsibility, or 2) Walsh-Healey. The COC process gives a rejected small business a second chance for a contract by allowing the SBA to conduct an extensive review of the company including: cost breakdown analysis, balance sheet, P&L statement, loan commitment, cash flow sheets, production plans, resume's of key personnel, previous government contract history and a plant inspection. A COC is accepted as conclusive by the contracting officer without any further requirements concerning responsibility or eligibility.

Mr. Chairman, the GAO reviewed the COC program in 1986 and found "that SBA procedures for assessing a prospective contractor's capabilities are sufficient to address the standards established by the Federal Acquisition Regulation. Moreover, its procedures are generally consistent with Department of Defense and General Services Administration procedures for assessing a prospective contractor's capabilities ...Further, the majority of contracting officers reported that COC contractors performed as well as non-COC contractors but that SBA's monitoring activities were inadequate." That report covered the years 1981 to 1985 when the annual number of COC applications increased from 880 to 1,652, with an approval rate of about 50%. In 1988 5,100 referrals were made to the SBA. Of those, 2,100 firms requested COC and 816 were issued on contracts totalling $358 million for a cost savings of $36 million below the second lowest bidder. Clearly this authority utilized by the SBA, which costs only $4 million in 1988, has saved the government a substantial amount of money and gave deserving small business a second chance.

In general, I believe that the program has and is functioning well. The SBA has increased its monitoring capability and is striving to reduce the delinquency rate and the Termination for Default rate on certified contracts. We have an excellent panel assembled here before us today and I look forward to their comments and suggestions. I commend both Chairman Skelton and Chairman Eckart for convening this hearing. To the thousands of small businesses that have utilized the COC process and to the thousands to follow - this second chance is often the 1st step in a successful contracting relationship with federal agencies. The SBA is to be commended for managing an efficient operation and all participating agencies commended for their considerate and cooperative actions. Small business needs every break it can get and the COC process is an extremely beneficial and important one. Thank you.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

STATEMENT OF
ROBERT J. MOFFITT
ACTING ASSOCIATE ADMINISTRATOR FOR PROCUREMENT ASSISTANCE
U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON ANTITRUST, IMPACT OF DEREGULATION
AND PRIVATIZATION
AND THE
SUBCOMMITTEE ON PROCUREMENT, TOURISM, AND RURAL DEVELOPMENT
COMMITTEES ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES
JUNE 7, 1989

MESSRS. CHAIRMEN AND MEMBERS OF THE SUBCOMMITTEES:
I am pleased to be able to appear today on behalf of the Small Business Administration (SBA) to discuss the Certificate of Competency (COC) program. This program has continuously served and assisted small businesses since its inception in 1942.

One of the most frustrating experiences a small business concern seeking a Government contract can encounter is to discover that it may be denied a contract award even though its bid is fully responsive, and in spite of the fact that its price is the lowest, simply because the contracting officer determines that it is a non-responsible bidder. All too often small businesses hear that they are non-responsible because they have no record of performance on Government contracts.

To encourage small business participation in the war effort, the COC program was enacted into law as part of the Small Business Mobilization Act (P.L. 77-603) in 1942. The same provisions were reenacted by the Defense Production Act of 1950 and subsequently transferred to the Small Defense Plant Administration in 1951. Two years later the Small Defense Plant Administration became the present day SBA by the Small Business Act of 1953.

Two significant amendments to the Small Business Act should be mentioned. Public Law 95-89 enacted in August 1977 authorized SBA to review all elements of responsibility including tenacity and perseverance, as well as integrity, and it also authorized SBA to review adverse Walsh-Healey Public Contracts Act eligibility requirements. The most recent amendment to the COC program occurred in 1984 with the enactment of the Small Business and Federal Procurement Competition Enhancement Act, which mandated that all determinations of non-responsibility involving a responsive small business contractor must be referred to SBA for review under the COC procedures regardless of dollar value.

I believe that the many reiterations of the COC legislation serve to clearly set forth the congressional intent for the COC program.

In time of war, the COC Program assures small business support for the war effort. More importantly, the COC Program provides small business a fair chance for award by providing a non-legal forum to challenge the substantive issues raised in the non-responsibility determination. There is no indication of any congressional intent to disregard the low bidder if the second low bidder is a small business, but to give the low responsive small business bidder a fair chance in obtaining a Government contract.

Since 1942 the program has been extremely successful in carrying out its legislative mandate. Literally thousands of small businesses have received Federal Government contract awards as a result of the COC program. In addition, the Government has saved millions of dollars as a result of awarding contracts to COC recipients rather than paying the increased prices offered by the second higher bidders. In the last 10 years (FY 78-88), for example, our records indicate that SBA received in excess of 38,000 COC referrals. As a result of these referrals, approximately 15,000 small businesses took advantage of the program and applied for COCs, and SBA issued 7,200 COCs with a value of $3.4 billion. In addition, due to information provided by SBA, procuring agencies directly awarded an additional 1,186 contracts valued at $856 million, making it unnecessary for the Agency to issue COCs in these instances. During this same period, the Government would have had to spend an additional $304 million to acquire the same goods from the next highest bidder, a considerable amount of savings to the Government by any standard.

The processing of COC applications is given extremely high priority by SBA, and the Agency enjoys an excellent record of keeping the time frame for the COC process, from referral to approval, to an absolute minimum. This fact was confirmed by GAO's comprehensive study of the Program in 1986, and it was substantiated again in 1988 by a SBA review, which indicated that the COC process accounts for less than 10% of the total time from solicitation to contract award. Both of these reports are discussed in greater detail later in this testimony.

When a Contracting Officer makes a determination of non-responsibility, that determination is forwarded to SBA along with other pertinent information. This starts the 15 day COC Process. Upon receipt of a referral, SBA contacts the small business to determine if it wishes to appeal the negative determination by applying for a COC. If it does, SBA allows the firm 5 working days to prepare its application.

SBA not only reviews but gives considerable weight to the material submitted by the procuring agency including the pre-award survey and the Contracting Officer's determination of non-responsibility. SBA's Industrial Specialists then perform their own investigation, which in most cases includes a field visit to the small firm. Concurrently, the Agency's Finance and Investment Division performs a comprehensive evaluation of the firm's ability to perform from a financial point of view.

In both the industrial and financial evaluation, the material submitted by the applicant is given due consideration; and because the firm is given five days to prepare its application, this material is often more detailed and thorough than what may have been reviewed initially by the Contracting Officer or by the agency which conducted the pre-award survey. In addition, SBA meticulously reviews the firm's past performance on government contracts, an aspect of the review which is given significant weight in reaching a decision whether or not to issue a COC. All evidence of a firm's responsibility must be documented in the COC file.

In most cases, SBA's decision is made at the Regional level by a committee comprised of the Assistant Regional Administrator for Procurement Assistance, the COC Specialist (also called an Industrial Specialist), a Financial Specialist, and the Regional Counsel. This committee provides an additional level of review which assures consistency and good internal control.

The SBA Central Office reviews COC cases in two circumstances: (1) if the contract is valued at more than $5,000,000 or (2) if the contracting agency appeals the positive recommendation made by the regional office.

If a COC is issued and the procuring agency awards a contract, SBA monitors each contract from award through contract completion. This follow-up is conducted on a quarterly basis at a minimum and monthly in cases requiring closer attention. Follow-up is an extremely important part of the COC process as it provides an ongoing assessment of the quality of our COC decisions and a measure of how COC contractors are performing.

In a report to Congress dated April 14, 1986, the General Accounting Office (GAO) released the results of a comprehensive study of the COC Program. This study served to destroy a number of misconceptions about the Program and, in general, improved its credibility. The highlights of the report may be summarized as follows:

- o SBA's procedures for determining a prospective contractor's capabilities are consistent with the general standards outlined in the Federal Acquisition Regulations (FAR) and provide the basis for sound decisions.

- o Of the 287 cases sampled by GAO, 87% of the time SBA had either made its decision within the 15-day deadline or had reached an agreement with the procuring agency for an extension. [A more recent review by SBA used data from FY 88 to determine the time impact of COCs on the total procurement cycle. This study found that the average number of days in the procurement cycle (on cases sent to SBA for a COC), for all agencies, was 158 days. The average number of days to process the COC action was 14 days, or less than 10% of the total procurement cycle.] It should be clear from this analysis that any impact of the COC Program on the procurement cycle is minimal.

- SBA does not rubber stamp COC applications: Of 15,733 referrals received by SBA during the previous five years, 5,700, or 36%, resulted in COC applications. Of these, SBA approved 2,971, or 52%. This percentage was substantially less than previously believed.

- Data indicated that contractors who obtained their contracts as a result of COCs performed, on average, no better or worse than contractors who received their contracts without a COC. [This conclusion confirmed an earlier study by the Air Force Institute of Technology as well as previous studies by GAO itself.]

- SBA's monitoring efforts did not always comply with the Agency's own internal procedures. This observation reflected some staffing deficiencies within the COC Program, a problem which has since been remedied. Currently, SBA follows up on each COC contract at least on a quarterly basis.

Attempts to manage the COC Program have not been problem-free. In recent years, the Program experienced an explosive growth in the number of referrals; referrals increased 86% from FY 1983 to FY 1986 (from 2,955 in 1983 to 5,497 in 1986). While the number of referrals grew, the number of COC Specialists did not. In FY 1985, for example, only 29 Specialists were handling a caseload that had grown from 3,113 referrals in 1984 to 4,896, a 57% increase. Later in the fiscal year, eight additional staff positions were added to the Regional Offices. This growth in personnel was still not enough to absorb the continued increase in workload as referrals reached a high of 5,497 in FY 1986. The number of COC referrals for FY 88 numbered 5,117 with 49 COC Specialists. Additional statistical data showing the growth in the COC Program from 1980 to 1988 is contained in Appendix 1.

The increase in personnel, improvements in operations, and stability in the number of referrals have contributed to better management and control of the COC caseload. Now COC Specialists are able to conduct a more in-depth review of the COC applicant's capabilities as well as spend more time on follow-ups. Follow-ups are conducted by investigating numerous sources, but primarily the Administrative Contracting Officers. Since 1986, COC Specialists have been conducting their follow-ups at least quarterly. For those cases where more frequent monitoring is required, follow-ups are conducted monthly, with the following priorities:

1. Delinquent or problem cases
2. High dollar value (over $2,000,000)
3. Contracting agency appeal or serious agency concerns
4. Firms with multiple COCs
5. All other COCs.

Additionally, the COC Program has initiated several improvements for better program operation:

- Certain types of COC cases require special handling; i.e., SBA's Regional Offices must notify and discuss each such case with the Office of Industrial Assistance in Washington, D.C., before a COC is issued. Such cases include the following:

  1. Defense Personnel Support Center referrals.
  2. Cases in which the COC applicant is currently operating under one or more COCs and is behind schedule.
  3. Cases in which the COC applicant has a consistent history of delinquency on past certified contracts.
  4. Referrals of procurements for a critical item which has a poor contract history.

- The Assistant Regional Administrator for Procurement Assistance must chair the Regional COC Review Committee for COC applicants with three COCs.

- The Regional Offices now conduct a quarterly assessment of the total delinquency rate for all certified contracts. This analysis allows the Regional Offices to assess the quality on their previous COC decisions. These statistics also provide program management feedback on the successful monitoring of certified contracts.

- The COC Review Committee must review all cases regardless of dollar value.

With more frequent follow-up, we are able to assess COC contractors' performance and concentrate on the few problem cases. As of the first quarter of FY 1989, the delinquency rate on COC contracts was 11.6%. By comparison, we have been led to believe that as of April 1, 1989, DLA's overall delinquency rate for administered contracts was 22.3%.

At this point, I would like to address the specific questions which you raised in your letter to the Administrator dated May 18, 1989:

Question 1: How well does the contracting officer from the procuring agency relate his or her opinions about the adequacy of the small business applying for the contract? Is the pre-award judgment detailed enough to justify the contracting officer's preliminary determination?

A contracting officer's views of a small business' capabilities to perform on a proposed procurement varies from one contracting agency to another, from one contracting officer to another. The Federal Acquisition Regulations (Part 19.602-1) require that a contracting officer include in the COC referral package his determination and findings of non-responsibility, a Pre-Award Survey and supporting papers, a copy of the solicitation, an abstract of bids for an advertised procurement, specifications, drawings, pertinent technical and financial information, and any other pertinent information to support the non-responsibility determination.

Even when the referral packages are complete, they can also vary in the significance of information they contain. Specifically, a referral may include a contracting officer determination of non-responsibility that does not appear to logically follow from a positive Pre-Award Survey (PAS). The PAS itself may not serve much purpose when it is too old (in some cases, beyond a year) or when the PAS is for an item or service different than the proposed procurement. In cases where the referral package is incomplete or the COC Specialist needs to reconcile confusing information before completing his COC review, the Specialist contacts the contracting officer for the required information.

Question 2: Is there adequate communication, either by mail or by telephone, between the contracting officer and the SBA procurement officer before the COC is issued?

SBA strives for successful relationships with contracting agencies despite hostile attitudes of some of their personnel. SBA feels that it is important to seek out complete information from all parties to arrive at a good decision. To do otherwise would be a disservice to itself, the contracting agency and the small business. SBA's active role in communicating with the contracting agency begins upon receipt of the referral, which the COC Specialist reviews for completeness. The Specialist then notifies the contracting officer that the referral has been received and a deadline date for processing the case established. From this point on, the contracting officer should feel free to discuss with SBA any aspects of the case, including contacting SBA with any additional information.

If an SBA Regional Office recommends issuance of a COC, the contracting officer is provided with advance notice of the proposed action with the reasons. If the contracting officer disagrees with the proposed recommendation, he still has the opportunity to express his views. The Federal Acquisition Regulations (FAR), 19.602-3, require SBA and the contracting officer "to make every effort to reach a resolution before the SBA takes final action on a COC. This shall be done through the complete exchange of information and in accordance with agency procedures."

The positive effects of an open line of communication between SBA and the contracting agency are evidenced by the significant number of direct awards made to referred firms. It is gratifying to SBA that through its efforts and those of the contracting agency, in these cases, the contracting officer chooses to forego the COC process by withdrawing his referral and making a direct award to the small business. This action is possible, of course, because SBA's COC survey has brought new facts to light.

Lastly, SBA's attempts at communication have not gone unnoticed by others. In its April 1986 report on the COC Program, GAO acknowledged that it was SBA's policy "to work closely with government procuring offices to ensure that government procurement regulations and SBA operating procedures are consistent."

Outside of SBA's interaction with the contracting officer during COC case processing, SBA supports enhanced communications with contracting agencies. For example, SBA attends meetings for Small and Disadvantaged Business Utilization Specialists, procuring contracting officers, and Defense Contract Administration Services Management Areas.

Question 3: Is fifteen days sufficient for the SBA procurement officer to determine whether or not a small business is capable of handling the contract?

Generally, 15 days are sufficient to process a case. It is our intent to efficiently provide as thorough a review of a small business's capabilities within the time frame allowed. SBA succeeds in working within the limited time frame of fifteen days to arrive at a decision based on a complete review of all the facts. Some cases, such as, those involving larger, more complex procurements, usually take more time. FAR, of course, allows for extensions if agreed upon by SBA and the contracting agency. In the GAO Report, it was found that 87% of the COC cases were processed within the required fifteen days; 11% were processed outside this time frame; 2% were in the last category which included direct awards. Despite SBA's tight time frame, GAO found that COC reviews are as thorough as those conducted by DOD and GSA. As part of the COC process, SBA requires the small business to submit detailed financial and production information. SBA is aware that some small businesses may be concerned that a decision on whether or not they will be awarded a contract is made in this period of time. You can be assured that SBA does not complete its COC processing until it has completed a comprehensive review within this time frame.

Question 4: After the COC is granted and the contract is awarded to a small business, how often does the SBA procurement officer contact the business to follow the progress of the contract? What does the SBA do if the contract is delinquent or the quality standards are found to be below par?

SBA's role in the COC process does not end with the issuance of a COC. SBA's Standard Operating Procedures emphasize that the performance of follow-ups is essential to insure feedback on the quality of our COC decisions. Rates of termination for default and delinquencies are to be held to a minimum. Follow-ups are required at least quarterly, but more frequently if necessary.

SBA requires its COC Specialists to contact both the Administrative Contracting Officer and the small business in order to assess the firm's performance on the contract. If a contractor does become delinquent, or if quality standards are found to be below par, SBA requires its field personnel to perform an analysis and recommend corrective actions. Such actions include working with both the small business and the contracting agency to ensure that any problems are overcome and that the firm is once again performing satisfactorily on the contract. SBA field personnel provide technical and financial assistance to the firm or direct it to other resources as may be required.

To summarize, the purpose of the COC Program is to ensure that specific small business concerns receive the contracts they deserve. No more and no less. To this end, the COC Program is extremely effective in helping small businesses prove that they are responsible contractors. In addition, the Program saves the Government a considerable amount of money. The performance of COC contractors has improved significantly, and the overall delinquency rate of certified contractors is currently half of what we believe to be the rate for non-COC contracts. In addition, over 94% of all COC contracts are completed.

SBA issued approximately 400 COCs on DoD procurements in FY 88. When viewed in the context of DoD's total procurement that year, SBA's COCs represented less than one-tenth of one percent of all procurements. From anyone's point of view, the one-tenth of one percent probably seems rather insignificant. On the other hand, from the standpoint of the small businesses which received those COCs, SBA's Program is a lifesaver.

SBA's COC Specialists work very hard to ensure that the integrity of the COC Program is maintained. While few in number, they have a wide range of expertise and are professional and extremely dedicated government employees.

SBA does not recommend any changes to the Program. The period of rapid growth appears to be over and currently we have the resources to effectively carry out our mission.

This concludes my prepared statement, Messrs. Chairmen. I would be pleased to answer any questions the Committees may have.

APPENDIX 1

CERTIFICATE OF COMPETENCY PROGRAM

FISCAL YEAR	NUMBER OF COC'S ISSUED	COC ISSUED DOLLAR VALUE	NUMBER OF ** DIRECT AWARDS	DIRECT AWARDS DOLLAR VALUE	GENERATED SAVINGS
1980	547	$170,022,007	41	$ 4,652,588	$16,662,484
1981	513	$424,095,882	62	$20,144,174	$24,551,015
1982	502	$690,332,433	88	$142,212,980	$28,685,219
1983	571	$176,575,734	131	$51,296,087	$28,603,428
1984	539	$219,938,157	125	$56,459,431	$26,288,471
1985	967	$443,583,432	182	$96,732,791	$54,480,173
1986*	1111	$445,294,970	204	$250,895,211	$61,330,452
1987*	919	$300,517,406	127	$111,477,000	$37,254,999
1988*	816	$358,376,749	168	$102,978,599	$36,368,986

*Includes Small Purchases, except for generated savings.

**A Direct Award is a contract made by the contracting officer based upon the information obtained by the Small Business Administration (SBA) during the COC process. The information obtained by SBA was sufficient to allow the contracting officer to make a positive responsibility determination and award a contract without a COC being issued.

STATEMENT
OF

MRS. ELEANOR R. SPECTOR

DEPUTY ASSISTANT SECRETARY OF DEFENSE
FOR PROCUREMENT

BEFORE THE

SUBCOMMITTEE ON ANTITRUST, IMPACT OF
DEREGULATION AND PRIVATIZATION

AND THE

SUBCOMMITTEE ON PROCUREMENT, TOURISM AND
RURAL DEVELOPMENT

OF THE

COMMITTEE ON SMALL BUSINESS OF
THE HOUSE OF REPRESENTATIVES

JUNE 7, 1989

THANK YOU VERY MUCH, MR. CHAIRMAN. I AM PLEASED TO BE HERE TODAY TO DISCUSS THE SMALL BUSINESS ADMINISTRATION'S CERTIFICATE OF COMPETENCY PROGRAM FROM THE VIEW POINT OF THOSE IN THE GOVERNMENT HAVING RESPONSIBILITY FOR THE PROCUREMENT OF REQUIRED SUPPLIES AND SERVICES.

WE ARE AWARE THAT THE RESOURCES THAT ARE AVAILABLE TO THE DEPARTMENT OF DEFENSE ARE NOT UNLIMITED AND IN FACT PROBABLY WILL BE SOMEWHAT LESS IN THE FUTURE THAN WHAT HAS BEEN AVAILABLE OVER THE LAST SEVERAL YEARS. IN THIS ENVIRONMENT, IT IS ESSENTIAL THAT WE SEEK AND FIND WAYS TO STREAMLINE AND IMPROVE THE ACQUISITION PROCESS AS PART OF OUR EFFORTS TO ASSURE THAT WHATEVER RESOURCES WE RECEIVE ARE EXPENDED IN THE MOST PRUDENT AND ECONOMICAL FASHION.

THE FEDERAL PROCUREMENT SYSTEM HAS GRADUALLY EVOLVED BY PASSING MORE AND MORE LAWS AND ADOPTING MORE AND MORE RULES AND PROCEDURES IN AN ATTEMPT TO ENSURE THAT OFFERORS AND CONTRACTORS ARE TREATED FAIRLY AND THAT THE GOVERNMENT DOES NOT ENTER INTO LESS THAN PERFECT BARGAINS. WHILE THESE GOALS

ARE LAUDABLE, THE GOVERNMENT HAS PAID A PRICE. THE PROCUREMENT SYSTEM HAS BECOME CUMBERSOME, CONSTRAINING, AND SLOW. THE RESULT IS THAT THE GOVERNMENT HAS NOT ALWAYS OBTAINED THE BEST BUYS AVAILABLE. WE ARE ACTIVELY SEEKING WAYS TO IMPROVE AND STREAMLINE THE PROCUREMENT PROCESS AND, TO THIS END, HAVE UNDERTAKEN AN EXTENSIVE EXAMINATION OF LAWS AND REGULATIONS THAT ARE DETRIMENTAL TO THE SMOOTH FUNCTIONING OF THE PROCUREMENT SYSTEM AND WHICH CAN BE REVISED OR ELIMINATED WITHOUT SIGNIFICANT DETRIMENTAL IMPACT ON ESSENTIAL DECISION-MAKING OR OVERSIGHT RESPONSIBILITIES OR OTHER IMPORTANT PROGRAMS.

IN 1988, DoD FORWARDED A LEGISLATIVE PROPOSAL CONSISTING OF SOME FIVE INDIVIDUAL INITIATIVES TO CONGRESS FOR THE PURPOSE OF IMPROVING AND STREAMLINING THE PROCUREMENT PROCESS. UNFORTUNATELY, NONE WERE ENACTED INTO LAW. WE ARE CURRENTLY EXPLORING SEVERAL IDEAS THAT WOULD IMPROVE THE ACQUISITION PROCESS INCLUDING SOME THAT WOULD SLIGHTLY MODIFY THE CoC PROGRAM.

ANY CHANGES TO THE CoC PROGRAM THAT WE PROPOSE WOULD BALANCE THE DUAL ISSUES OF ASSURING THAT A FAIR PROPORTION OF CONTRACTS ARE AWARDED TO SMALL BUSINESS FIRMS, AND OUR EQUALLY GREAT CONCERN THAT DoD, AS THE BUYER, BE THE DETERMINER OF WHO IS A RESPONSIBLE CONTRACTOR. ONE IDEA UNDER CONSIDERATION IS THAT THE CoC PROCESS BE APPLIED ONLY TO CONTRACTS WITH A VALUE ABOVE $25,000 AND NOT TO PURCHASES OF $25,000 OR LESS. WHEN THE CoC PROCEDURE WAS ENACTED AS PART OF THE SMALL BUSINESS ACT IN 1953, IT TOOK AWAY FROM CONTRACTING OFFICERS THE FINAL DETERMINATION OF A SMALL BUSINESS CONCERN'S CAPABILITY TO PERFORM ON A SPECIFIC CONTRACT. AT THAT TIME, HOWEVER, PROCUREMENTS BELOW THE SMALL PURCHASE THRESHOLD WERE NOT RESERVED FOR SMALL FIRMS AS THEY ARE AT THIS TIME. NOW, EACH PROCUREMENT OF PROPERTY OR SERVICES WITH A VALUE OF $25,000 OR LESS IS RESERVED FOR THE EXCLUSIVE PARTICIPATION OF SMALL BUSINESS CONCERNS. THEREFORE, A NEGATIVE DETERMINATION WITH RESPECT TO THE CAPABILITY OF A PARTICULAR SMALL BUSINESS FIRM TO FULFILL THE REQUIREMENTS

OF A SMALL PROCUREMENT GENERALLY WILL NOT HAVE A NEGATIVE IMPACT ON THE OBJECTIVE OF PROCURING PRODUCTS AND SERVICES FROM SMALL FIRMS.

ANOTHER POSSIBLE MODIFICATION OF THE CoC PROGRAM IS THAT PROCURING AGENCIES NOT BE REQUIRED TO REFER TO THE SMALL BUSINESS ADMINISTRATION PROCUREMENTS FOR CoC ACTION WHEN THE SECOND LOW OFFEROR IS ALSO A SMALL BUSINESS FIRM. AGAIN WE SUPPORT THE OVERALL OBJECTIVE OF ASSURING THAT A FAIR PROPORTION OF THE TOTAL PURCHASES OF PROPERTY AND SERVICES ARE PLACED WITH SMALL BUSINESS FIRMS. THEREFORE, THIS EXCLUSION FROM THE CoC REQUIREMENTS IS EXPRESSLY LIMITED TO THOSE SITUATIONS WHERE ANOTHER SMALL FIRM IS IN LINE FOR THE AWARD.

AS A BASIC CONCEPT, WE BELIEVE THAT THE CONTRACTING OFFICER, NOT THE SBA, SHOULD BE RESPONSIBLE TO DETERMINE IF A PARTICULAR CONTRACTOR IS CAPABLE OF PERFORMING A CONTRACT. THIS IS FUNDAMENTAL TO SOUND MANAGEMENT.

ASIDE FROM THE NEGATIVE IMPACT OF THE CoC PROGRAM ON THE DECISION-MAKING AUTHORITY OF

CONTRACTING OFFICERS, THE CoC PROCESS CAN BE QUITE TIME CONSUMING FOR THE PROCURING AGENCY, THE SBA, AND THE COMPANIES CONCERNED. PRESENTLY, PROCURING AGENCIES HAVE NO CHOICE BUT TO REFER ALL NEGATIVE DETERMINATIONS OF THE CAPABILITY OF A SMALL BUSINESS CONCERN TO THE SBA FOR CoC PROCESSING. THE INITIAL REFERRAL REQUIREMENT ALONE IS ESTIMATED TO DELAY THE PROCUREMENT ACTION FOR ABOUT 30 DAYS INCLUDING THE 15 DAYS TAKEN BY SBA. THE BEST INFORMATION THAT WE HAVE INDICATES THAT LESS THAN HALF OF THESE REFERRALS RESULT IN A REQUEST BY A CONTRACTOR FOR THE SBA TO CONTINUE THE CoC PROCESS.

IN YOUR LETTER INVITING ME HERE TODAY YOU REQUESTED INFORMATION ON THE SUPPORT REQUIRED FOR A NONRESPONSIBILITY DETERMINATION BY A CONTRACTING OFFICER . THE FEDERAL ACQUISITION REGULATION REQUIRES CONTRACTING OFFICERS TO POSSESS OR OBTAIN SUFFICIENT INFORMATION TO SUPPORT A DETERMINATION THAT A PROSPECTIVE CONTRACTOR IS RESPONSIBLE PRIOR TO MAKING AN AWARD. DOCUMENTS AND REPORTS SUPPORTING THIS DETERMINATION OR A NONRESPONSIBILITY DETERMINATION MUST BE INCLUDED IN THE

CONTRACT FILE. THE REFERRAL TO THE SBA FOR CoC PROCESSING MUST INCLUDE THE ELEMENTS OF RESPONSIBILITY THAT WERE FOUND TO BE LACKING AS WELL AS OTHER SUPPORTING DOCUMENTATION SUCH AS COPIES OF PREAWARD SURVEYS, THE SOLICITATION, AND TECHNICAL INFORMATION. RECOGNIZING THAT INTELLIGENT PEOPLE MAY DIFFER IN THEIR OPINIONS, WE BELIEVE THAT AS A GENERAL RULE THE INFORMATION FORWARDED BY CONTRACTING OFFICERS TO THE SBA IN SUPPORT OF CoC REFERRALS SUPPORTS THE DETERMINATION OF NONRESPONSIBILITY. FURTHER, WE HAVE NO INDICATION THAT COMMUNICATIONS BETWEEN THE CONTRACTING OFFER AND THE SBA PRIOR TO THE ISSUANCE OF A CoC ARE LACKING.

FOR THE INDIVIDUAL PROCUREMENT INVOLVED, THE CoC PROCESS CAN BE TIME CONSUMING AND PERHAPS COSTLY. WHEN A REFERRAL IS MADE TO THE SBA, THE CONTRACTING OFFICER IS REQUIRED TO STOP THE CONTRACTING PROCESS AND WAIT FOR THE COMPLETION OF THE CoC PROCESS. DURING THE TIME INVOLVED, OFFERS RECEIVED FROM OTHER SMALL BUSINESS CONCERNS, AS WELL AS LARGE CONTRACTORS, MAY EXPIRE IF THESE CONCERNS ARE UNWILLING TO EXTEND THE PERIOD FOR ACCEPTANCE OF OFFERS. (OFFERS ACCEPTANCE PERIODS ON SET-

ASIDE PROCUREMENTS GENERALLY RUN FROM THIRTY TO NINETY DAYS AND TO A SIGNIFICANT EXTENT DEPEND ON PRICE COMMITMENTS FROM MATERIALS/PARTS SUPPLIERS.) IT IS NOT UNUSUAL FOR CONTRACTING OFFICERS TO BE REQUIRED TO SEEK EXTENSIONS OF OFFER PERIODS DUE TO CoC PROCESSING.

CLEARLY WE WOULD PREFER THAT FINAL AUTHORITY WITH RESPECT TO THE CAPABILITY OF ANY FIRM TO PERFORM A CONTRACT REMAIN WITH THE CONTRACTING OFFICER. THIS IS CONSISTENT WITH OUR THRUST TO RETURN CONTRACTUAL DECISION MAKING AUTHORITY TO CONTRACTING OFFICERS AND TO RELY ON INDIVIDUAL AUTHORITY AND ACCOUNTABILITY. WE BELIEVE THAT THIS AUTHORITY WOULD BE CARRIED OUT WITHOUT DETRIMENT TO THE SMALL BUSINESS PROGRAM AND COULD BENEFIT INDIVIDUAL CONTRACT ACTIONS THAT WOULD OTHERWISE BE AFFECTED BY THE DELAYS INHERENT IN THE CoC PROCESS. HOWEVER, WE RECOGNIZE THAT THERE MAY BE DIFFERING OPINIONS AND IN RECOGNITION OF THESE DIFFERENCES HAVE DEVELOPING IDEAS WHICH WE HOPE WILL BE ACCEPTABLE TO ALL CONCERNED.

THANK YOU.

STATEMENT OF IDA M. USTAD
BEFORE THE
SUBCOMMITTEE ON ANTITRUST, IMPACT OF
DEREGULATION, AND PRIVATIZATION
COMMITTEE ON SMALL BUSINESS
OF
HOUSE OF REPRESENTATIVES
JUNE 7, 1989

Mr. Chairman, I am Ida M. Ustad, Director of the Office of GSA Acquisition Policy and Regulations for the General Services Administration. I appear before you today to respond to questions on the efficiency of the Small Business Administration Certificate of Competency (COC) program.

Under applicable procurement laws Government contracting officers are required, prior to the award of a contract, to determine whether the proposed awardee is responsible to perform the contract. Responsibility is composed of a number of elements pertaining to an offeror's ability and trustworthiness. Specifically, those elements include questions of capability, competency, capacity, credit, integrity, perseverance, and tenacity. The concept of a responsibility determination gives recognition to the fact that it does not serve the Government's interests to award a contract, even to a low bidder, where circumstances indicate that the offeror may be unable or disinclined to perform a contract in accordance with its terms and in an ethical manner. Historically, contracting officers have been given great latitude in making such determinations in recognition of the fact that agency contracting officials should be in the best position to assess responsibility, will bear the major brunt of any difficulties experienced in obtaining required performance, and will maintain the day-to-day relations with the contractor on the Government's behalf. The Certificate of Competency program, however, affords a small business concern the opportunity to apply to the Small Business Administration for a

Certificate of Competency when a Government contracting officer makes a determination that the small business is lacking with respect to one or more of the elements of responsibility for the purpose of receiving and performing a specific Government contract. If the small business applies for a Certificate of Competency, the Small Business Administration reviews the contracting officer's determination and independently determines whether the small business is responsible to perform the contract in question.

In its letter dated May 23, 1989, the Committee raised a number of questions regarding the Certificate of Competency program.

First, the Committee inquired whether the Certificate of Competency program provided an essential purpose for small business. It is my understanding that the fundamental purpose of the program was to provide a forum for the independent review of a contracting officer's determination that a small business is not responsible to perform a particular contract. The intent is to assure that small business concerns, especially new entrants into the Federal procurement market, are afforded a fair opportunity to receive Government contracts. In our view, the program adequately serves this purpose and has been implemented effectively by the Small Business Administration.

Second, the Committee asked how well contracting officer's relate their determination regarding the capability of a small business to perform a particular contract that is the subject of a Certificate of Competency application to Small Business Administration officials. The contracting officer's responsibility determination is usually a reflection of his or her evaluation of the results of preaward surveys conducted to assess the technical, production, quality assurance and financial capabilities of the prospective contractor. These survey reports, together with the contracting officer's assessment of the survey findings, generally provide sufficient information and analysis to support the contracting officers determination. Copies of the survey reports and the contracting officer's determination are provided to the Small Business Administration when a Certificate of Competency referral is made.

The Committee also questioned whether the communications between the contracting officer and the SBA officials, prior to the issuance of a Certificate of Competency, were adequate. GSA contracting officers generally report that they have good working relationships with SBA officials working in the Certificate of Competency program area. Information is freely exchanged between GSA contracting officers and SBA officials before Certificates of Competency are issued.

Finally, the Committeec asked whether the delay caused by the referral to the SBA unreasonably delayed the award of GSA contracts. The preaward referral does delay contract awards on average by 15 to 20 days. However, in GSA's view, the number of contracts affected is relatively few and generally the delay does not unduly interfere with the agency's ability to satisfy the Government's needs.

I would be happy to answer any further questions the Subcommittee may have.

STATEMENT OF AL MATERA
BEFORE THE
SUBCOMMITTEE ON ANTITRUST, IMPACT OF
DEREGULATION, AND PRIVATIZATION
COMMITTEE ON SMALL BUSINESS
OF
HOUSE OF REPRESENTATIVES
JUNE 7, 1989

Mr. Chairman, my name is Al Matera. I am a Contracting Officer with GSA's Federal Supply Service, in the Office and Scientific Equipment Commodity Center. My contracting officer's warrant allows me to award and administer contracts for an unlimited dollar value. I have also been appointed as a Certified Public Purchasing Officer by the National Institute of Governmental Purchasing.

I have been involved in the acquisition process since 1976, first as a Contract Specialist, and since 1983, as a supervisor. I currently supervise ten employees, eight of which are Contract Specialists, whose principal duties are the negotiation, award, and administration of contracts.

My current program responsibilities include the award and administration of contracts under three Federal Supply Schedules covering copying equipment and special industry machinery, such as bookbinding equipment and paper shredders. These schedules comprise approximately 100 national scope contracts, with a total value of almost $1.5 billion

Many of the offers submitted in response to our various solicitations are from small business. The Federal Acquisition Regulations require that the Contracting Officer make an affirmative determination of contractor responsibility before the award of any contract. In some instances, like other Contracting

Officers, I have made determinations of non-responsibility, usually due to inadequate finances or facilities, which require the matter to be forwarded to the SBA for consideration of issuing a Certificate of Competency.

My overall personal experience with the COC program has been positive. The COC program provides a service for the small business community, by giving such firms an opportunity to be determined responsible through a review of the Contracting Officer's determination. Although some small businesses do experience problems in performing a contract awarded as a result of a COC, most firms perform satisfactorily. The potential for delinquent or unsatisfactory performance will always be greater when the firm has one or more marginal elements of responsibility.

Communications between Contracting Officers and SBA industrial specialists are usually adequate, but may vary on a case by case basis. In referrals to SBA, the Contracting Officer submits a formal findings and determination of non-responsibility, which notes the areas where the firm is lacking. While responsibility is ultimately the determination of the Contracting Officer, these findings and determinations are reviewed by our Office of General Counsel. The amount of communication that occurs between the SBA and the Contracting Officer depends on the particular case involved. My main concern with respect to the matter of communications is that on some occasions when a COC is issued, the Contracting Officer is not provided with the supporting rationale.

Preaward surveys are the first step in responsibility determinations. In GSA, these surveys are conducted by our Office of Credit and Finance, and our Office of Quality and Contract Administration. In most cases, the preaward survey findings are accepted by the Contracting Officer, especially if favorable. This should not be construed to mean that preaward surveys are automatically accepted; it is not unusual for a Contracting Officer to "override" a negative survey and award a contract. However, in such a case, the Contracting Officer must obtain higher level approval.

The preaward survey concerning a bidders financial standing is made by financial analysts. These analysts rely on various bidder provided documents such as balance sheets, profit and loss statements, and annual reports, as well as other sources of information like Dun and Bradstreet. Reasonable time_frames for the furnishing of this information are imposed on bidders in order to ensure timely contractual actions. In virtually all cases, every effort is made to accommodate a bidder who needs more time to assemble or complete the information required. Additionally when capability or capacity is involved, a Quality

Assurance Specialist performs an inspection of the bidders' plant and makes a recommendation to the Contracting Officer.

Once a bidder has been determined non-responsible, he normally is advised of this fact and the reasons for the determination by the Contracting Officer. He is also informed that the matter will be referred to the SBA for eligibility under the COC Program.

As in the case of any program, there are costs. Perhaps the main cost of the COC program is that under some circumstances, the time involved to process the COC results in a delay in the award of the contract.

The chief benefit of the program is that it assures that small business concerns are afforded a fair opportunity to receive Government contracts. I do not have sufficient information to determine whether the benefits outweigh the costs.

This concludes my opening statment, and I will now be happy to answer any questions you may have.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

STATEMENT OF
THOMAS DUMARESQ
ASSISTANT REGIONAL ADMINISTRATOR FOR PROCUREMENT ASSISTANCE
NEW YORK REGIONAL OFFICE
U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON ANTITRUST, IMPACT OF DEREGULATION
AND PRIVATIZATION
AND THE
SUBCOMMITTEE ON PROCUREMENT, TOURISM, AND RURAL DEVELOPMENT
COMMITTEES ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES
JUNE 7, 1989

MESSRS. CHAIRMEN AND MEMBERS OF THE SUBCOMMITTEES:

I am pleased to be here today to talk about the Certificate of Competency (COC) Program. I believe that the statement of Mr. Moffitt covers most basic information regarding the history and current operation of the program. I will try to provide a working level perspective of our field operation.

The following is in response to the questions raised in your letter to the Administrator dated May 30, 1989:

1) How well does the contracting officer from the procuring agency relate his or her opinions about the adequacy of the small business applying for the contract? Is the pre-award judgment detailed enough to justify the contracting officer's preliminary determination?

In general, preaward surveys and determinations of nonresponsibility do contain sufficient information to allow identification of the specific problem that led to the COC referral. Too often, however, the Contracting Officer does not have an opinion regarding the bidder beyond the fact that a negative preaward survey recommendation was received. In some cases the Contracting Officer actually has a favorable opinion regarding the bidder as a result of acceptable performance on prior contracts for the identical item. Nevertheless, the negative preaward recommendation will almost invariably lead to a determination of nonresponsibility.

Since the Contracting Officer is often interested primarily in the recommendation rather than the basis for it, communication with our office concerning the facts that led to the negative survey is usually limited. We will, depending on the circumstances, communicate directly with the individuals that performed the pre-award survey, the cognizant Government Inspector and/or Industrial Specialist as well as technical personnel at the buying activity. We make every effort to ensure that we fully understand the basis for the negative recommendation. We are acutely aware that there is absolutely no benefit to either the small business or the Government to award a contract that is beyond the capability of the bidder. If a problem does exist that might impact performance it is essential that we are aware of it.

It should be noted that most negative pre-award survey recommendations, particularly those performed by DCAS offices, are based on the bidders performance record. This factor alone, however, is not always indicative of a firms ability to perform on the procurement in question. For example, small firms often have two or more separate product lines. Poor performance in one line may have absolutely nothing to do with performance on the other. Often, it makes little sense to deny a contract award in one area based on problems in the other.

In some cases considerations of this type are taken into account during pre-award surveys but I believe that too much emphasis is currently being placed on a simple evaluation of a prospective contractors delinquency rate. This relates to the question of communication in two ways.

Pre-award offices, like DCAS, correctly take the position that they are just making recommendations to the Contracting Officers who must then make a final determination regarding the bidders responsibility. As a result, policies can develop with the idea that the Contracting Officer will override the negative survey if the policy does not fit the particular situation. For instance, a firm's inclusion in the Contractor Improvement Program, (CIP), may automatically lead to a negative pre-award survey recommendation based on a local DCAS policy. This negative recommendation may not be justified, however, based on the particular facts of the situation. I do not believe that communication between the pre-award office and the Contracting Officer is adequate to insure that the negative recommendation will be overridden if the circumstances warrant such an action.

The COC Program offers another avenue of communication among all the parties involved in this process. Many times personnel from the buying activity receive information from SBA that resolves doubts about a company's ability to perform on a particular project. The bidder often gets a much better understanding of the requirements of the procurement as well as an awareness of the problems identified during the pre-award survey. Resolving problems between the Agency and the small business bidder is a major objective of our Program.

2) Is there adequate communication, either by mail or by telephone, between the contracting officer and the SBA procurement officer before the COC is issued?

Again, one of our primary goals is to insure that an adequate line of communication is established. Generally we are successful. In every case the Contracting Officer is notified of SBA's intent to issue a COC as well as their appeal rights. A COC is never issued at the Regional level without the acknowledgment of the Contracting Officer. At times pre-award personnel are apparently not consulted prior to acceptance of a COC by the Contracting Officer but this is clearly a communication problem outside the control of SBA.

3) Is fifteen days sufficient for the SBA procurement officer to determine whether or not a small business is capable of handling the contract?

The 15 day time frame is adequate, in most cases, for our review. A small firm going through the process for the first time often needs additional time to get application paperwork together but extensions can be negotiated with the contracting officer and generally this does not create a problem. A recommendation to issue a COC is virtually always made by the established deadline.

4) After the COC is granted and the contract is awarded to a small business, how often does the SBA procurement officer contact the business to follow the progress of the contract? What does the SBA do if the contract is delinquent or the quality standards are found to be below par?

The required frequency of followup reviews on certified contracts was described in the testimony of Mr. Moffitt. In my office, followups are performed in accordance with these established guidelines. Sometimes contracts are reviewed on a more frequent basis if we anticipate that a problem may develop. Our purpose is to insure that all work is completed in accordance with contractual requirements.

We currently conduct monthly meetings with all COC Specialists in the Region to discuss each open COC that is delinquent or expected to run late. Most of our COC Specialists are former Government inspectors and each has a different area of technical expertise. By discussing each problem case together we can normally identify an appropriate course of action to get the contract back on track if it is possible. Actions might include getting the company together with technical representatives from the buying activity to clarify specifications, contacting suppliers to improve material delivery dates, or working with the small firm to get their quality system up to speed.

The results of these activities shows up in the performance record on the certified contracts. Our delinquency rate is currently around 15% and we expect it to drop below 10% by the end of the fiscal year. In contrast, the corresponding DCAS Region, I believe, has a current delinquency rate of roughly 30% on Category I contracts. Category I contracts are the most critical, high dollar value contracts monitored by DCAS. Our performance relative to contracts in other categories is similar.

During a ten year period beginning in 1978 I performed hundreds of COC surveys and followup reviews on small businesses throughout SBA's Region II which encompasses New York, New Jersey, Puerto Rico and the U.S. Virgin Islands. I have seen first hand how the COC Program is critical to the success of many small firms that are trying to either become established or reestablished in the federal procurement arena.

I believe that a large proportion of current small business contractors in Region II at some point in their development received assistance through the COC Program.

Clearly, the COC Program has proven itself to be extremely beneficial to both the small business community and the federal procurement system as well.

This concludes my prepared statement Messrs. Chairmen. I would be pleased to answer any questions the Committees may have.

INTELLISYS

Tentative Testimony of Harold E. Popplewell
June 7, 1989 Oversight Hearing for SBA COC Program
Subcommittee on Anti Trust, Impact of Deregulation
and Privatization
Subcommittee on Procurement, Tourism, and Rural Development

This document summarizes the intended testimony of Harold E. Popplewell, CEO of IntelliSys, Inc. during the June 7, 1989, oversight hearing on Small Business Administration (SBA) Certificate of Competency program.

1.0 Introduction

IntelliSys, Inc. is a two year old small business specializing in Artificial Intelligence software for military training systems, computer integrated manufacturing systems, and for general information systems. IntelliSys is the prime contractor to the U.S. Navy for training device 20F16, the world's first simulator incorporating very large scale, real-time artificial intelligence. The 20F16 is designed to prevent incidents such as those experienced by the USS Stark and USS Vincennes through highly realistic, time stressed, multi threat, tactical decision making training for ships' captains, executive officers, tactical action officers, and warfare area officers. Artificial Intelligence is used to simulate the tactical decisions of

6075 East Molloy Road □ Syracuse, New York 13211 □ (315) 433-0100

opposing force commanders, ships' captains and their crew for up to 30-ship forces.

Modern surface ships, submarines, aircraft, and helicopters, both NATO and Warsaw Pact, are simulated, including Artificial Intelligence - simulated tactical crews acting in concert with one another.

IntelliSys is the inventor of this technology and has been materially sided by the Small Business Administration's COC program. Following are some pertinent facts concerning IntelliSys, Inc.:

1) Incorporated in Syracuse, NY on May 13, 1987.
2) Current, estimated contractual backlog is $24 Million.
3) Prime Contractor to U.S. Navy (20F16) and U.S. Air Force (Ballistic Missile Instructional System).
4) Received Certificate of Competency in October, 1988 for a $6.8 Million U.S. Navy Award of Firm Fixed Price Contract No. N61339-88-C-0079 for 20F16.
5) IntelliSys would NOT have been awarded this contract without the COC.
6) Approximately 90% of IntelliSys, Inc.'s sales are to the Federal government, primarily DoD.

2.0 Contracting Officer Communications

The Contracting Officer communicates with IntelliSys through a Contract Specialist (Michael White - NTSC) and through an Administrative Contracting Officer (Maury Farinacci - DCASMA Syracuse).

Naval Training Systems Center (NTSC)

NTSC has been highly communicative and reasonably responsive with regard to contractual matters. We have experienced trouble with regard to obtaining contractually - required Government Furnished Information and Software causing some degree of risk to the program and, thus, the COC administration.

Defense Contractor Administration Services Management Area (DCASMA)

The Administrative Contracting Officer has been contentious and abusive to IntelliSys employee's with regard to differing interpretation of applicable Federal Acquisition Regulations. This has caused a medium to high degree of risk since the ACO has the ability to stop or delay progress payments. This risk is purely financial but is probably the only COC - related risk to the program.

With regard to pre-award communication, I feel that the communication was reasonably adequate. All communication was very timely but the narrow interpretation of Quality Assurance requirements caused a "No Award" recommendation triggering the COC progress. Specifically, the results of DCASMA's pre-award survey were denied IntelliSys by the ACO informally although the results were secured via a Freedom of Information Act request developed by our special counsel.

In summary, I believe DCASMA's (or the ACO's) interpretation of the Federal Acquisition Regulation (FAR) should be reviewed with regard to the provisions for Small Business.

3.0 Small Business Administration Thoroughness

I am unequivocally impressed by the Small Business Administration's thoroughness in examination of our responsibility and capability to perform this contract.

It should be noted that this program has very high visibility within DoD because of the value to national defense of our specific approach using Artificial Intelligence.

The SBA reviewed every aspect of IntelliSys more completely than any other examination our business has ever undergone by government, banking, or venture capitalists.

As an example, IntelliSys was required to prepare a detailed submittal of our contract - specific and business - wide capability within 15 days. In our case this was nearly 600 pages of information!

Mr. George Guarella of the SBA was the chief examiner and I was equally impressed with this individual's preparation for the COC examination. Thorough and demanding, Mr. Guarella was also professional and friendly setting my staff at ease and, thus, obtaining more information and more accurate information in the time allotted.

In summary, I cannot imagine a more thorough review in that everything was examined.

4.0 SBA Post Award Monitoring

The SBA has requested (and IntelliSys has complied) that we deliver to them all data items prepared for this contract. To date, this data has exceeded 10,000 pages and may reach 100,000 before the contract is complete.

Further, IntelliSys reports various contractual matters to the SBA on a regular (monthly) basis.

Finally, the SBA calls the company at least once per month to informally gather information on status and risk.

The combination of these methods of communication provide a very thorough program of monitoring without being unduly intrusive and, thus, without adding administrative expense.

Attendance at major program reviews might assist in the monitoring of the COC contractor in that the direct interaction of the procuring activity and the contractor is an extremely important review - tool. Quarterly contact with the contractor may give review authorities a one-sided estimate. Observing direct interaction would likely be an important PREVENTIVE method.

5.0 SBA Technical Assistance

IntelliSys has not required any form of technical assistance from the SBA.

A more powerful tool might be INTERPRETIVE assistance wherein the SBA would avail the contractor of a technical opinion with regard to interpretation of technical, quality, and data requirements. Military contracts are managed via expensive data items which are voluminous. Assistance in interpretation "how much is enough" would be a great aid in avoiding contractual and/or financial difficulty.

6.0 Recommended Improvements

Following are recommended improvements in the COC program, in descending order of importance, from the IntelliSys perspective.

1. Interpretive assistance for technical specifications, the Federal Acquisition Regulations, and Administrative Requirements.
2. Thorough, informative information or training for the COC process, evaluation criteria, the meaning of a COC, etc.
3. Providing assistance in fashioning risk-control provisions in subcontractors from the COC contractor to other firms with special assistance in subcontracting to major companies.

4. A more activist role after granting the COC in terms of guidance to the small business and intervention/review of the procuring agency's decisions with regard to the small business.
5. Consider forming a small business executive COC network. I believe these suggestions, if implemented, would better serve the dual interest of promoting the success of small businesses and assuring that the overall best interests of the Government are served.

I believe that investing in the fair and competitive success of U.S. small businesses is one of the most productive investments that we, as taxpayers, can make. Innovation and job creation, on a national basis, is provided most effectively by small business. The COC program and the SBA itself are of enormous value to national interest.

AIRBORNE
INDUSTRIES INC.

Airborne Industries is a small business that manufactures specialty electronic, communication and electromechanical devices for military and commercial markets. The business was started five years ago as the first tenant of Thomas Edison Incubator Program in Akron, Ohio. Our first Government contract was for $27,000 to the Naval Supply Center and was certified by the SBA under the COC program. In the last three years our employment has increased from six to thiry-five employees. We have applied for eight COC's, received six, completed three, and currently have three open COC contracts. The value of all COC contracts is $2.4 million. Prime Government contracts represent about 80% of our backlog.

At the time of submitting a bid or proposal there is usually no communications from the Contracting Officer to us. Rather DCASMA personnel inform us that they have been directed by the procuring agency to conduct a Pre Award Survey on a specific solicitation. Normally, a PAS Team from DCASMA Production and Quality conduct an on site survey, while Financial information is formally requested in writing and returned by mail to DCASMA. DCASMA personnel do not share with us the results of their audit. Normally we do not know the results of a PAS until the SBA notifies us why we have failed the PAS and ask whether we want to apply for a COC.

The time frame involved in requesting a COC application and its completion and return is approximately 7-10 days. The COC application is a comprehensive review of our company, including a complete plan for all phases of the contract, a detailed production plan, quality assurance program, supplier and subcontractor survey, financial analysis, and completion of SBA Forms 74, 74A, 74B and 355. The SBA then sends its own audit team to our plant to conduct an on-site survey.

Once a COC contract is awarded, the SBA representative monitors our progress on a quarterly basis and offers technical assistance regarding procurement policies, the F.A.R. (Federal Acquisitions Regulations), quality issues and contract administration.

The COC program is vitally important to small business. The PAS/COC process can be improved by:

1. Requiring DCASMA personnel to conduct a PAS exit interview wherein they identify any problem areas. This allow a contractor adequate time to correct any deficiencies.

2. Lengthening time for COC application.

3. Require DCASMA to evaluate for approval Contractor Quality systems. Currently, DCASMA audits are based on a "Guess what I'm thinking?" philosophy and reflect only those items found not to be in compliance.

4. Reevaluating DCASMA policies regarding delinquencies in those cases where a Contractor, in good faith, has been granted and paid for an extension in delivery schedule. DCASMA penalizes the Contractor by recognizing only the original delivery schedule.

Budget cutbacks and other changes in Government procurement will tend to reduce the number of spare parts contracts, and will create fewer, higher dollar value individual contracts of several items. Where on spare part contract might be worth $125,000, basketing several items together could increase the contract value to several million dollars. "Basketing" spare parts solicitations in this way by the DOD will exacerbate negative Pre Award Surveys, put greater pressure on the COC process, reduce competition and prevent many small businesses from being able to compete for prime Government Contracts.

Thank you.

TH Martell

Terrence H. Martell
President

THE BARES GROUP

Manufacturers of Specialty Hand Tools Since 1956

524 Washington Street
Chagrin Falls, Ohio 44022
(216) 247-6066
Telex 469278 Milbar CI

June 1, 1989

The Hon. Dennis Eckhart
1210 Longworth Bldg.
Washington, D.C. 20515

Dear Congressman Eckhart:

For ten years our small firm, located in Chagrin Falls, has been the David of small business, successfully attacking many Goliaths in obtaining and executing contracts for G.S.A. Because of our size and frugality our presense in the market has had the effect of lowering prices dramatically. In one particular tool, the government purchases in excess of 12,000 items per year. Before we bid, in 1983, the unit cost was $26.00; there was one supplier. We were just awarded our fourth contract for this item at a price of $14.90; the next lowest bid, a large firm, was $18.10. Over the last 5 years, we estimate the saving to our government - i.e. to ourselves as taxpayers - to have been well over $200,000.00 And of course, there is the additional benefit of keeping the work here in Ohio, since the competing firm is in the South.

Our other large contract, awarded to us last month, is for a group of special tools used by the aircraft industry; we supply McDonnell Douglas, Boeing and the R.A.F. with these same tools and again, were the low bidder by a substantial amount on 15 items on a contract for 16 tools.

In both contracts, we have obteined the support of the S.B.A. by means of a certificate of competency, a C.O.C. We were required to obtain the assistance of S.B.A. because of a former delivery problem ; the steel used in all these tools is a special tool steel. As you well know, America has lost much of its steel production capabilities to the Orient; consequently deliveries can be delayed by months. We were caught in a trap of non-delivery . So although our tools were of high quality and low price, the contracts , totalling $800,000. would have gone to the large firms, offering the items at prices much higher. Not only would the business have left Ohio; we would have been forced to lay off good people and the American taxpayer would have paid a premium.

When the representatives of S.B.A. inspected our facilities, they were thorough and demanding. Once we were awarded the C.O.C. there was no doubt that we could perform the work according to schedule. We have been shipping two and three months in advance of due dates.

I personally prepared the many reports, and analysis required by S.B.A. and can surely attest to the depth of their investigation. Not only does the very act of prepering these required documents clarify the structure and operation of the business, but it affords the small business owner an opportunity to see his company realistically . The ensuing discussions with the S.B.A. personnel are in themselves an excersise in effective strategic planning.

My firm has benfitted from the C.O.C. program. I feel strongly that our government's purchasing arm has also benefitted by our survival. Above all, the future competitiveness of the market has been guaranteed.

THEBARESGROUP

Manufacturers of Specialty Hand Tools Since 1956

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In this era of buy-outs, mergers and consolidations, it is a challenge to remain independent. *Small* can frequently be more responsive, flexible and healthy. But *small* needs an occassional boost. The C.O.C PROGRAM OF THE SMALL BUSINESS ADMINISTRATION certainly provides this impetus to the little guy. Please do all you can to further the effectiveness and continuance of this program.

Sincerely,

Alice Bares

Alice Bares,
THE BARES GROUP

cc.: Michael Hudak, S.B.A.
Jack Bares, MILBAR CORP.
Brad Roller, Chairman C.O.S.E.

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June 12, 1989

Small Business Sub-Committee
Anti-Trust Deregulation Privitization
B363 Rayburn House Office Bldg.
Washington, D.C. 20515

ATTENTION: The Honorable Denise Ackart, Chairman

Dear Chairman Ackart:

We take this opportunity to express our strong endorsement of the concept of "Certificate of Conformance" (COC). Our company was formed in 1976 and owes its existence to the COC Program. As an immigrant, I have been afforded the opportunity to learn what many have learned before me-that this is indeed a "land of opportunity".

Having been rejected for the award of an important (to us) contract, mostly because we hadn't previously produced the item, we applied for a COC. After a thorough review by the Small Business Administration, our capabilities were recognized and we were awarded the contract. The positive assessment of our capabilities was justified by our subsequent satisfactory completion of the contract. It certainly proved that an initial negative recommendation by one agency should be subject to review by another.

During our relatively brief period of existence, we have been able to save the Government in excess of $30 million. Attached please find a copy of an article published in the August 8, 1985 issue of the KELLY OBSERVER commending this same type of savings. The corresponding Certificate of Competency number for this mentioned contract is COC-09-5437 for your informational purposes. Without the COC Program and our participation in the procurement chain, this saving would not have been achieved. I am sure that this experience can be multiplied many times over.

I would like to cite at least three instances where a lack of competence or concern on the part of an initial reviewer made the availability of the program directly meaningful to us:

1. A negative recommendation was made by a DCAS Quality Assurance Representative. As a basis for this recommendation, this individual had copied verbatim an old Quality Deficiency Report (QDR) that had long since been rectified. The COC investigation revealed the falacy and inadequacy of the report.

2. A contract award was denied because DCAS indicated that there were no approved bidding rates on file. This was contrary to actuality as subsequently determined by COC review.

3. Overt expression by some DCAS personnel that they had excessive workload and would rather not be involved with a further increase in workload.

As you can see, we strongly favor the continuance of the COC availablility. We shall be happy to answer any questions you might have, or personal participation you might feel helpful.

Sincerely,

HYDRAULICS INTERNATIONAL, INC.

H. Ghaemmaghami
President

HG/sk